FEDERAL REGISTER

VOLUME 4 NUMBER 69

Washington, Tuesday, April 11, 1939

Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT

FARM CREDIT ADMINISTRATION

[Correction]

The title of FEDERAL REGISTER document No. 39–1183 filed by the Farm Credit Administration on April 7, 1939, at 11:57 a. m., and printed in the Saturday, April 8, 1939, issue of the FEDERAL REGISTER on page 1509 should read as follows:

FCA 130—NONPRODUCERS' OWNERSHIP OF VOTING MEDIA IN COOPERATIVE ASSOCIATIONS

TITLE 7—AGRICULTURE

BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B. E. P. Q. 495]

SEC. 301.64B — ADMINISTRATIVE INSTRUCTIONS — RELATING TO THE MEXICAN FRUITFLY QUARANTINE, REQUIRING STERILIZATION OF ALL GRAPEFRUIT HARVESTED ON AND AFTER APRIL 12, 1939, AND EXTENDING THE HARVESTING SEASON ON GRAPEFRUIT TO THE CLOSE OF MAY 15, 1939

APRIL 7, 1939.

Under authorization vested in the Chief of the Bureau of Entomology and Plant Quarantine in the third proviso of Notice of Quarantine No. 64 revised (Sec. 301.64), it is hereby required, as provided in paragraph (e) of Regulation 6 thereto (Sec. 301.64–6), that all grapefruit harvested on and after April 12, 1939, in the area regulated under said quarantine, shall be sterilized under approved methods as a condition of issuance of permits for movement of such fruit from the regulated area.

Section A, Regulation 7 (Sec. 301.64–7) of said quarantine is also hereby modified to extend the harvesting season for grapefruit to the close of May 15, 1939. The host-free period for grapefruit, under this modification, will begin May 16 and continue to August 31, 1939, inclusive. (B. E. P. Q. 487, dated January 27, 1939, extends the harvesting season for Valencia oranges to June 15, 1939.)

Sterilization of grapefruit has been found necessary to insure against dissemination of Mexican fruitflies, due to the occurrence of such flies in the regulated area. The extension of the harvesting season, it has been determined, may be safely made without increasing the risk of spread of the Mexican fruitflies since sterilization will render grapefruit safe for movement from the regulated area. (Sec. 301.64) [B. E. P. Q. 495, April 7, 1939]

[SEAL] LEE A. STRONG,
Chief, Bureau of Entomology and Plant Quarantine.

[F. R. Doc. 39–1205; Filed, April 10, 1939; 12:29 p. m.]

TITLE 21—FOOD AND DRUGS

FOOD AND DRUG ADMINISTRATION

PRESCRIPTION AND PROMULGATION OF REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT GOVERNING EXPORTS AND IMPORTS, AND REPEAL OF CERTAIN REGULATIONS HERETOFORE PROMULGATED

Under the authority of Section 701 (a) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 et seq.; 21 U. S. C. 301 et seq.), the following regulations, hereby jointly prescribed under section 701 (b) of the act by the Secretary of the Treasury and the Secretary of Agriculture for the efficient enforcement of section 801 (a) of the act, and the following regulations prescribed under section 701 (b) of the act by the Secretary of the Treasury for the efficient enforcement of section 801 (b) and (c), are hereby promulgated by the Secretary of Agriculture.

These regulations shall take effect on June 25, 1939; except that, to the extent that they may relate to the enforcement of sections 502 (j), 505, or 601 (a) of the act, they shall take effect on the date hereof.

All former regulations governing exports and imports to the extent that

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FEDERAL REGISTER

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they are inconsistent herewith are hereby repealed.

Prescribed at Washington, District of Columbia, this 21st day of March 1939.

(Signed) STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

H. A. WALLACE,
Secretary of Agriculture.

Promulgated at Washington, District of Columbia, this 8th day of April 1939.

H. A. WALLACE,
Secretary of Agriculture.

SEC. 2.300 *Shipper's declaration.* A person who ships a food, drug, device, or cosmetic to the United States shall make a declaration (on Form No. 197 or No. 198 Consular, whichever shall be applicable) which shall include a statement to the effect that such article has not been manufactured, processed, or packed under insanitary conditions; that such article is not forbidden or restricted in sale in the country in which it was produced or from which it was exported; that such article is not adulterated, misbranded nor in violation of section 505 of the Act.

FORM NO. 198—CONSULAR* DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. ____, certified at _____, _____ on _____, I, the undersigned, am the (Date)

_____
(Seller or owner, or agent of seller or owner) of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in _____ and (Country)
manufactured in _____ (Town and country)
by _____ during the year (Name of manufacturer)
_____, and are exported from _____ (City)
and consigned to _____ (City)
They bear no false labels or marks, contain no added coloring matter except _____ (State
_____ coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except _____ (State preservative used, if any)

I further declare that such article or articles are not of such character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at _____ this _____ day (Place)
of _____.
(Month and year)
(Signature) _____.

SEC. 2.301 *Instructions to consular officers.* (a) (1) This declaration (Sec. 2.300) is to be firmly attached to all copies of consular invoices covering shipments of over $100 in value.

(2) The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.

(3) Shipper should be instructed to declare the name of the manufacturer whenever possible.

(4) If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

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*Consular Form 197 contains the same wording—but in addition includes a special invoice (form) at the bottom of the sheet. (It is employed in cases where the usual consular invoice is not required).

(b) If the article is to be offered for import at Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Denver, Houston, Kansas City, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, San Francisco, St. Louis, Seattle, or other port where a station shall be established by the Food and Drug Administration, the seller or shipper shall attach such declaration to the invoice on which such article is to be entered.

(c) If the article is to be offered for import at a port where no station has been established by the Food and Drug Administration, the seller or shipper shall make an extra copy of such invoice for the station of the Food and Drug Administration within the jurisdiction of which such port is located, and shall attach such declaration to such extra copy.

SEC. 2.302 *Bonds — Delivery — Sampling.* (a) No food, drug, device, or cosmetic shall be delivered to the consignee prior to report of examination of such article, or prior to the stamping of the invoice as prescribed by paragraph (b) of this regulation showing that no sample is desired, except upon the execution on the appropriate form of a customs single-entry or term bond, containing a condition for the redelivery of the merchandise, or any part thereof, upon demand of the collector of customs at any time, in such amount as is prescribed for such bonds in the customs regulations in force on the date of entry. The bond shall be filed with the collector of customs, who, in case of default, shall take appropriate action to effect the collection of liquidated damages provided for in the bond.

(b) As soon as the importer makes entry of an article, the invoice covering it and the package of it designated by the collector of customs for examination shall be made available, with the least possible delay, for inspection by a representative of the station. When a sample is desired the representative shall request the collector of customs or the appropriate customs officer therefor, indicating the size of the sample. When no sample is desired the invoice shall be stamped by the representative "No sample desired. Food and Drug Administration, United States Department of Agriculture, per (initials of the representative)."

(c) (1) At ports of entry where there is no laboratory of the Food and Drug Administration the collector of customs or appropriate customs officer shall, on the day of receipt of the first notice, by invoice or entry, of an expected shipment of articles subject to the Act, notify the chief of station, within whose territory the port is located, of the expected shipment.

(2) If no sample is desired, the chief of station, on the day he receives the notice, shall advise the collector of customs or appropriate customs officer by mail to that effect. Such advice shall be equivalent to stamping invoices at ports where stations are located with the statement prescribed in paragraph (b) of this regulation.

(3) If a sample is desired, the chief of station shall immediately request the collector of customs or appropriate customs officer to forward it and indicate the size of sample.

(4) Upon receipt of such request the collector of customs or appropriate customs officer shall forward the sample without delay, together with a description of the shipment.

(5) When samples will be desired from each shipment of a particular article or when samples will not be desired, the chief of station shall furnish, at least every six months, to collectors of customs or appropriate customs officers within the station territory, a list of such articles and on the list of articles of which samples will be desired, shall indicate the size of sample for each such article. Upon the arrival of shipments of articles appearing on the list of samples which will be desired, the collectors of customs or appropriate customs officers shall send such samples to the station without delay, together with a description of the shipments. The list of articles, samples of which will not be requested, shall be treated as the equivalent of paragraph (b) of this regulation and the invoices of such articles shall be handled accordingly.

(6) In all particulars the procedure shall be the same at non-laboratory ports as at laboratory ports except that the time consumed in delivery by mail of the notice of hearing shall be allowed for.

SEC. 2.303 *Jurisdiction.* (a) Whether or not an article is in compliance with or in violation of the provisions of section 801 of the Act is to be determined by the officers of the stations of the Food and Drug Administration.

(b) The detention, exportation and destruction of merchandise shall be accomplished under customs supervision. At laboratory ports customs officers and officers of the Food and Drug Administration may alternately, in accordance with local agreement, perform duties, or supervise operations, under these regulations, which are not specifically assigned to either service, consideration being given to local conditions and personnel.

(c) At non-laboratory ports the collector of customs or appropriate customs officer shall carry out the necessary operations on receipt of the necessary information from the chief of station of the Food and Drug Administration of the appropriate laboratory port.

SEC. 2.304 *Notices required under Sec. 801 of the Act.* All notices required by regulation under sec. 801 of the Act to be given to the owner or consignee of an article offered for import shall be deemed to have been duly and effectively given if given to the importer of record of such article.

SEC. 2.305 *Notice of sampling.* (a) A notice to an owner or consignee that a sample of an article has been requested by the Secretary of Agriculture shall be in writing and shall be mailed by the collector of customs or appropriate customs officer to such owner or consignee, or such notice may be given by a suitable bulletin notice posted in the custom house listing all invoices of articles from which samples will be taken and posted in the custom house not later than one day after the day the decision is reached to take samples from such articles. Such bulletin notice shall remain posted for one week.

(b) The notice to an owner or consignee that a sample of an article has been requested by the Secretary of Agriculture shall likewise state that such article must be held intact until released.

SEC. 2.306 *Release—No violation detected.* If it does not appear from the examination of the sample or otherwise that an article is adulterated, misbranded or in any other respect subject to prohibitions of the Act, the chief of station of the Food and Drug Administration shall give written notice of release to the owner or consignee of such article and a copy thereof shall be sent to the collector of customs or appropriate customs officer.

SEC. 2.307 *Procedure when violation is alleged.* (a) If the result of the examination of the sample or other evidence indicates that an article is adulterated, misbranded, or otherwise subject to the prohibitions of the Act, the chief of station of the Food and Drug Administration shall give written notice thereof to the owner or consignee of such article and a copy thereof shall be sent to the collector of customs or appropriate customs officer. Such notice shall allege the respects in which such article appears to be adulterated, misbranded, or otherwise subject to the prohibitions of the Act, and shall set a time and place for such owner, or consignee to appear and introduce testimony.

(b) Such testimony shall be confined to matters relevant to the alleged adulteration, misbranding or other condition subject to the prohibitions of the Act, and may be introduced by letter or in person by such owner or consignee, or by a representative chosen by him for the purpose.

(c) Upon request, seasonably made, by such owner, consignee, or representative, such time may be changed if the request states reasonable grounds therefor and is made on or prior to the date for the hearing. Such request shall be addressed to the chief of station of the Food and Drug Administration which issued the notice.

SEC. 2.308 *Procedure after hearing—Release or rejection and notice.* (a) After the owner or consignee of an article appears, produces testimony, or is given reasonable opportunity therefor, as provided by Sec. 2.307 (b), the chief of station of the Food and Drug Administration, over the signature of the collector of customs or authorized stamped

facsimile thereof, shall notify such owner or consignee in writing that such article is released so far as the Act is concerned, and send a carbon copy of the notice to the collector of customs or appropriate customs officer, or so notify such owner or consignee, that it appears from such examination that such article does not conform with the provisions of the Act, and that it is to be refused admission, stating the reason therefor in such notice and send a carbon copy of the notice to the collector of customs or appropriate customs officer.

(b) The notice of refusal of admission shall state that the article must be exported or destroyed under customs supervision within three months of the date thereof, as provided by law. The owner or consignee (or importer of record in case notice has been sent to him) shall return the notice to the collector of customs or appropriate customs officer with the information required by the form filled in and properly certified. The copy of the notice sent to the collector of customs by the chief of station, when action is completed, shall then be returned to the chief of station with notation thereon of the action taken. The exportation of articles refused admission under the Act or the regulations thereunder shall be in accordance with the procedure set forth in the applicable customs regulations which have been or may be prescribed by the Secretary of the Treasury.

SEC. 2.309 *Relabeling or other act to bring article into compliance with the Act and notice.* (a) The owner or consignee of an article may, at the time of the hearing or within a reasonable time thereafter, request the chief of station of the Food and Drug Administration in writing to permit the relabeling or other act with respect to such article necessary to bring it into compliance with the provisions of the Act, or to render it not a food, drug, device, or cosmetic within the meaning of the definitions of such articles in section 201 (f), (g), (h), and (i) of the Act. Such request shall propose the labeling to be used and any other act to be done for such purpose, and shall specify the time and place where such proposed labeling or other act is to be done.

(b) Unless such relabeling or other act with respect to such article is prohibited by paragraph (c) of this section, the chief of station of the Food and Drug Administration, over the signature of the collector of customs or authorized stamped facsimile thereof, will give such owner or consignee written notice that such relabeling or other act will be permitted, and send a carbon copy of the notice to the collector of customs.

Such notice shall specify all conditions which must be fulfilled within three months of the date of the notice in order to bring such article into compliance with the provisions of the Act including the destruction, under customs supervision, of all rejected material, or to render it not a food, drug, device, or cosmetic within the meaning of the definitions of such articles in section 201 (f), (g), (h), and (i) of the Act, and to bring the performance thereof within the provisions of the bond covering the merchandise.

In addition, the notice shall also indicate the officer who shall be notified by the owner or consignee (or the importer of record if notice has been sent to him) when the operations have been completed and the article is ready for inspection. If such conditions are fulfilled within three months of the date of the notice specified by this subsection, such article will be released, and notice thereof given to the owner or consignee. A carbon copy of the notice shall be sent to the collector of customs.

(c) When it appears that the labeling constitutes a flagrant or intentional misbranding, or that the condition of the article is such as to indicate deliberate adulteration, or the owner or consignee thereof was informed with respect to any violation prior to the date of export, or that a public notice had been issued by the Secretary of Agriculture to the effect that, after a date prior to such date of export, such relabeling or other act with respect to such article would not be permitted, then the provisions of the preceding paragraphs shall not apply and the article must be destroyed or exported under customs supervision.

(d) When relabeling or other act with respect to such article is to be allowed under the provision of paragraph (b) of this section, the owner or consignee (or importer of record if the notice has been sent to him) shall return the notice to the collector of customs, or the appropriate customs officer, or chief of station designated thereon, with the certificate on the notice filled out stating that he has performed the prescribed operations, that the rejected portion required to be held for destruction is so held and is ready for destruction under customs supervision, that the article, including such rejected portion, is ready for inspection, naming the place where such article and such portion are held.

(e) The officer so notified shall deliver the notice to the representative of the Food and Drug Administration or to the appropriate customs officer who is to make the inspection. After inspection the representative shall write a report thereof on the back of the notice and send it to the collector of customs, or the appropriate customs officer, or chief of station, as the case may be, from whom he received the notice.

SEC. 2.310 *Release of detained goods which have been reconditioned.* (a) (1) When the operations to be performed are under the entire supervision of the chief of the station, and these operations have been effectively and completely performed and all of the conditions imposed have been fulfilled within the time prescribed therefor, he shall give notice to the importer that the article is released insofar as the provisions of the Act relate thereto and shall send a copy thereof to the collector of customs or the appropriate customs officer; but if the operations have not been effectively and completely performed and all of the conditions imposed have not been fulfilled within the time prescribed therefor, and the article is to be exported or destroyed, the chief of station, over the signature of the collector of customs, or authorized stamped facsimile thereof, shall immediately give notice of refusal of admission to the importer and shall send a carbon thereof to the collector of customs or the appropriate customs officer. Such notice shall show that the article must be exported or destroyed, under customs supervision, within three months from the date of notice, as required by law.

(2) When, however, the operations to be performed are under the supervision of the chief of station and the destruction of a rejected portion of the article under customs supervision is a condition of the release, the chief of station shall give notice to the collector of customs or the appropriate customs officer that the portion which has been brought into compliance with the act is ready for release after destruction of the rejected portion has been accomplished, under customs supervision, and transmit to him the notice received from the importer with the form thereon properly filled in showing that the rejected portion is ready for destruction. The collector of customs or the appropriate customs officer, with the least possible delay, shall supervise the destruction of the rejected portion. Within one day after such destruction the collector of customs or the appropriate customs officer shall return such notice to the chief of station after having noted thereon that the destruction has been accomplished. Within one day after the receipt of such notice the chief of station shall send notice of release of the article to the importer and a carbon copy thereof to the collector of customs or appropriate customs officer.

(b) When all the operations to be performed are under customs supervision, and these operations have been effectively and completely performed within the time prescribed therefor, the collector of customs or the appropriate customs officer shall give the notice of release of the article to the owner or consignee and shall send a carbon copy thereof to the chief of station. If the conditions imposed include destruction of the rejected portion of the article no release of the article shall be given until the rejected portion has been destroyed under customs supervision. If, however, operations have not been effectively and completely performed within the time prescribed therefor, the collector of customs or appropriate customs officer shall give notice to the owner or consignee that the article shall be exported or destroyed within three months from the

date of the notice and shall send a copy thereof to the chief of station.

(c) The privilege of relabeling or other operation to bring an article into compliance with the act shall be allowed only when the owner or consignee agrees to hold the article at a stated place and to maintain conditions at all times which will preserve the identity of the article and prevent its loss through mixture with other articles or otherwise. The owner or consignee shall furnish evidence satisfactory to the chief of station or collector of customs or appropriate customs officer by affidavit or otherwise as to the identity of any article which has been subject to such operations.

(d) When the collector of customs or the appropriate customs officer has taken final action with respect to an article which has been refused admission, or with respect to which relabeling or other operations have been permitted under his supervision he shall give notice thereof to the chief of station, showing the date of release or destruction, or the date of exportation and the country to which the article is exported, as the case may be.

(e) The chief of station may require that the owner or consignee submit affidavits executed before a Notary Public or other officer authorized to administer oaths generally, showing to the satisfaction of the chief of station the use to which such article has been put.

(f) Inspection of articles under the Act involving relabeling and other operations to bring them into compliance with the Act when no representative of the station is available therefor, and inspection of articles to be exported or destroyed, in whole or in part, shall be performed by collectors of customs or the appropriate customs officers.

(g) Collectors of customs and chiefs of stations shall make joint arrangement for the apportionment of inspection duties between them, due regard being given to local conditions. Whenever feasible representatives of stations at laboratory ports shall inspect articles which have been relabeled or subjected to other operations to bring them in compliance with the Act. At non-laboratory ports relabeling and other operations will be under the supervision of the collector of customs or the appropriate customs officer.

SEC. 2.311 *Disposal in violation of the Act, regulations or bond.* (a) If a customs officer who has supervision over the disposal of an article acquires evidence tending to show that the disposal was in violation of the Act or of sections 2.309 and 2.310 of these regulations or of the terms of the bond, the collector of customs or appropriate customs officer shall immediately send such evidence in detail, to the chief of station. The chief of station shall send to the collector of customs or the appropriate customs officer a statement giving a summary of all the facts and any additional evidence which he may have tending to show the importers' liability under the bond.

(b) If the chief of the station has supervision over the disposal of an article and acquires evidence that the disposal was in violation of the act or these regulations, or of the terms of the bond, he shall immediately send to the collector of customs or the appropriate customs officer a statement giving a summary of all the facts and any evidence he may have tending to show the importers' liability under the bond.

(c) The collector of customs or the appropriate customs officer, within three days of receipt of the statement and evidence, shall notify the owner or consignee that the article must be returned to customs custody. If the article is not returned to customs custody within thirty days from the date of the notice, action shall be taken immediately to enforce the terms of the bond unless, in the meantime, the owner or consignee shall file with the collector of customs or the appropriate customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate and under oath.

(d) The collector of customs or the appropriate customs officer shall transmit the application, his recommendation, and the station chief's statement, all in duplicate, to the Secretary of the Treasury, through the Bureau of Customs, for the necessary action.

(e) All notices required by regulation under section 801 of the Act to be given to the owner or consignee of an article offered for import shall be deemed to have been duly and effectively given if given to the importer of record of such article.

SEC. 2.312 *Articles suitable only for technical or restricted use, denaturing.* (a) A food, drug, or cosmetic which is adulterated or misbranded within the meaning of this Act and which is offered for import for industrial purposes must be denatured and the invoice thereof must bear a statement showing that the article is to be used for industrial purposes.

Where, however, it is impracticable to denature such article it may be permitted entry provided—

(1) It is plainly and conspicuously labeled, in the case of food, "inedible", and, in the case of drugs, "not for medicinal use".

(2) At the time of entry the owner or ultimate consignee submits a statement in writing that the article will not be used as a food, drug, or cosmetic.

(3) At the time of entry the owner or ultimate consignee submits a statement that the article will be used in a certain suitable manner by a certain named party or parties.

(4) At the time of entry the owner or ultimate consignee agrees to furnish satisfactory proof as to the actual use of the article and the name or names of the parties who use it.

The liability under the bond given at the time of entry will not be regarded as having been satisfied until such evidence of satisfactory disposition shall have been received by the collector of customs.

(b) A food, drug, or cosmetic having but a restricted legitimate use and of such character that it can not legally be distributed for unrestricted general use, e. g., pharmacopoeial crude drugs deficient in active principle and certain substitutes for pharmacopoeial crude drugs, may be allowed entry if properly labeled, provided suitable evidence be furnished by affidavit or otherwise that it will be used by a designated party or parties for manufacture into articles in which it may be legitimately employed. The liability under the bond given at the time of entry will not be regarded as having been satisfied until proof of satisfactory use of the product shall have been received by the collector of customs.

[F. R. Doc. 39-1195; Filed, April 8, 1939; 12:41 p. m.]

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS

PART 130—AMENDMENT OF ORDER FIXING OPERATION AND MAINTENANCE CHARGES JOCKO VALLEY IRRIGATION DISTRICT FLATHEAD INDIAN RESERVATION, MONTANA

MARCH 25, 1939.

Sections 130.28 and 130.29, of Title 25, Chapter I, Part 130, Fixing Operation and Maintenance Charges on Jocko Valley Irrigation District, Flathead Indian Reservation, Montana, which read:

SEC. 130.28 *Charges.* In pursuance to the provisions of a contract executed by the Jocko Valley Irrigation District, Flathead Irrigation Project, Montana, on November 13, 1934, and approved by the Secretary of the Interior on February 26, 1935 as supplemented by an agreement dated August 26, 1936, notice is hereby given that the assessment for operation and maintenance of the irrigation system to serve that portion of the Flathead Irrigation Project within the confines of the Jocko Valley Irrigation District for the irrigation season of 1938 is $3,500. This assessment involves an assessable area of approximately 4,587 acres, but does not include any lands held under Indian trust patent, and covers all proper project overhead and general charges. This amount shall be paid by the District to the United States, one-half to be paid on or before February 1, 1938, in advance of delivery of

water, and the remainder to be paid on or before July 1, 1938.

SEC. 130.29 *General regulations.* The Jocko Valley Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the irrigation districts on the Flathead Irrigation Project, approved by the Secretary of the Interior under date of June 5, 1937,[1]

are amended to read:

SEC. 130.28 *Assessment.* Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Indian Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented by a later contract dated August 26, 1936, notice is hereby given that an assessment of $4,500 is fixed for the season of 1940 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of the Jocko Valley Irrigation District. This assessment involves an area of 4,700 acres, does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

SEC. 130.29 *Payment.* The assessment herein fixed shall become due and payable, one-half on or before February 1, 1940, in advance of the delivery of water for that season, and the remainder on or before July 1, 1940. Payment shall be made by the Irrigation District to the United States through the Office of the Flathead Indian Irrigation Project, St. Ignatius, Montana.

SEC. 130.29a *General regulations.* The Jocko Valley Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the Irrigation Districts on the Flathead Irrigation Project approved by the Secretary of the Interior on June 5, 1937, as covered by Sections 100.100 to 100.109, inclusive.

(Sgd.) OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39–1190; Filed, April 8, 1939; 10:32 a. m.]

PART 130—AMENDMENT OF ORDER FIXING OPERATION AND MAINTENANCE CHARGES MISSION IRRIGATION DISTRICT FLATHEAD INDIAN RESERVATION, MONTANA

MARCH 25, 1939.

Sections 130.26 and 130.27, of Title 25, Chapter I, Part 130, Fixing Operation and Maintenance Charges on Mission Irrigation District, Flathead Indian Reservation, Montana, which read:

SEC. 130.26. *Charges.* In pursuance to the provisions of a contract executed by the Mission Irrigation District, Flathead Irrigation Project, Montana, on March 7, 1931, and approved by the Secretary of the Interior on April 21, 1931, as supplemented by agreements between the Secretary of the Interior and the Mission Irrigation District dated June 2, 1934, and August 26, 1936, notice is hereby given that the assessment for operation and maintenance of the irrigation system to serve that portion of the Flathead Irrigation Project within the confines of the Mission Irrigation District for the irrigation season of 1938 is $9,000. This assessment involves as assessable area of approximately 10,764.3 acres, but does not include any lands held under Indian trust patent, and covers all proper project overhead and general charges. This amount shall be paid by the District to the United States, one-half thereof to be paid on or before February 1, 1938, in advance of delivery of water, and the remainder to be paid on or before July 1, 1938.

SEC. 130.27. *General regulations.* The Mission Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the Irrigation Districts on the Flathead Irrigation Project, approved by the Secretary of the Interior under date of June 5, 1937,[1]

are amended to read:

SEC. 130.26 *Assessment.* Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented by later contracts dated June 2, 1934 and August 26, 1936, notice is hereby given that an assessment of $13,800 is fixed for the season of 1940 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of the Mission Irrigation District. This assessment involves an area of approximately 11,500 acres, does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

SEC. 130.27 *Payment.* The assessment herein fixed shall become due and payable, one-half on or before February 1, 1940, in advance of the delivery of water for that season, and the remainder on or before July 1, 1940. Payment shall be made by the Irrigation District to the United States through the Office of the Flathead Indian Irrigation Project, St. Ignatius, Montana.

SEC. 130.27a *General regulations.* The Mission Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the Irrigation Districts on the Flathead Irrigation Project approved by the Secretary of the Interior on June 5, 1937, as covered by Sections 100.100 to 100.109, inclusive.

(Sgd.) OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39–1189; Filed, April 8, 1939; 10:31 a. m.]

[1] 2 F. R. 1109.

PART 130—AMENDMENT OF ORDER FIXING OPERATION AND MAINTENANCE CHARGES, FLATHEAD IRRIGATION DISTRICT, FLATHEAD INDIAN RESERVATION, MONTANA

MARCH 25, 1939.

Sections 130.24 and 130.25, of Title 25, Chapter I, Part 130, Fixing Operation and Maintenance Charges on Flathead Irrigation District, Flathead Indian Reservation, Montana, which read:

SEC. 130.24 *Charges.* In pursuance to the provisions of a contract executed by the Flathead Irrigation District, Flathead Irrigation Project, Montana, on May 12, 1928 as supplemented by agreements between the Secretary of the Interior and the Flathead Irrigation District dated February 27, 1929, March 28, 1934 and August 26, 1936, notice is hereby given that the assessment for operation and maintenace of the irrigation system to serve that portion of the Flathead Irrigation Project within the confines of the Flathead Irrigation District for the irrigation season of 1938 is $60,000. This assessment involves an assessable area of approximately 66,324.8 acres, but does not include any lands held under Indian trust patent, and covers all proper project overhead and general charges. This amount shall be paid by the District to the United States, one-half thereof to be paid on or before February 1, 1938, in advance of delivery of water, and the remainder to be paid on or before July 1, 1938.

SEC. 130.25 *General regulations.* The Flathead Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the Irrigation Districts on the Flathead Irrigation Project approved by the Secretary of the Interior under date of June 5, 1937.[1]

are amended to read:

SEC. 130.24 *Assessment.* Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented by later contracts dated February 27, 1929, March 28, 1934, and August 26, 1936, notice is hereby given that an assessment of $86,750 is fixed for the season of 1940 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines of the Flathead Irrigation District. This assessment involves an area of approximately 68,000 acres, does not include any land held in trust for Indians, and covers all proper general charges and project overhead.

SEC. 130.25 *Payment.* The assessment herein fixed shall become due and payable, one-half on or before February 1, 1940, in advance of the delivery of water for that season, and the remainder on or before July 1, 1940. Payment shall be made by the Irrigation District to the

United States through the Office of the Flathead Indian Irrigation Project, St. Ignatius, Montana.

SEC. 130.25a *General regulations.* The Flathead Irrigation District shall comply fully with the general rules and regulations applicable to the areas included in the Irrigation Districts on the Flathead Irrigation Project approved by the Secretary of the Interior on June 5, 1937, as covered by Sections 100.100 to 100.109, inclusive.

(Sgd.) OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39–1188; Filed, April 8, 1939; 10:31 a. m.]

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[T. D. 4894]

PARTS 3, 9 AND 465

INCOME TAX

Amending Articles 901–5 and 901–6 of Regulations 101, and Such Articles as Made Applicable to the Internal Revenue Code by Treasury Decision 4885, Articles 1001–5 and 1001–6 of Regulations 94, and Articles 801–5 and 801–6 of Regulations 86, All Relating to Classification of Limited Partnerships

To Collectors of Internal Revenue and Others Concerned:

Article 901–5 of Regulations 101[1] (section 9.901–5 of Title 26, Code of Federal Regulations), and that article as made applicable to the Internal Revenue Code by Treasury Decision 4885,[2] approved February 11, 1939 (Part 465, Subpart B, of such Title 26), and article 1001–5 of Regulations 94[3] (section 3.1001–5 of such Title 26), and article 801–5 of Regulations 86 are each amended to read as follows:

"*Limited partnerships.* A limited partnership is classified for the purpose of the Act as an ordinary partnership, or, on the other hand, as an association taxable as a corporation, depending upon its character in certain material respects. If the organization is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and if the management of its affairs is centralized in one or more persons acting in a representative capacity, it is taxable as a corporation. For want of these essential characteristics, a limited partnership is to be considered as an ordinary partnership notwithstanding other characteristics conferred upon it by local law.

"The Uniform Limited Partnership Act has been adopted in several States. A limited partnership organized under the provisions of that Act may be either an association or a partnership depending upon whether or not in the particular case the essential characteristics of an association exist."

Article 901–6 of Regulations 101 (section 9.901–6 of Title 26, Code of Federal Regulations), and that article as made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 (Part 465, Subpart B, of such Title 26), and article 1001–6 of Regulations 94 (section 3.1001–6 of such Title 26), and article 801–6 of Regulations 86 are each amended to read as follows:

"*Partnership associations.* A partnership association of the type authorized by the statutes of several states, such, for instance, as those of the State of Pennsylvania (Purdon's Penna. Stat. Ann., (Perm. Ed.), Title 59, ch. 3), having by virtue of the statutory provisions under which it was organized, the characteristics essential to an association within the meaning of the Act, is taxable as a corporation."

(This Treasury Decision is prescribed pursuant to the following sections of law: Sections 3797 and 62 of the Internal Revenue Code (53 Stat. Part 1); sections 901 and 62 of the Revenue Act of 1938 (52 Stat. 583, 480; 26 U. S. C. Sup. IV, 1696, 62); sections 1001 and 62 of the Revenue Act of 1936 (49 Stat. 1756, 1673; 26 U. S. C. Sup. IV, 1696, 62); and sections 801 and 62 of the Revenue Act of 1934 (48 Stat. 771, 700, 26 U. S. C. 1696, 62).)

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, Apr. 7, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39–1207; Filed, April 10, 1939; 12:45 p. m.]

[T. D. 4893]

AMENDMENT OF REGULATIONS 13

To District Supervisors and Others Concerned:

Pursuant to the authority in Section 2871, Internal Revenue Code, paragraph (1) of Article 7, Regulations 13,[1] approved May 24, 1937, is hereby amended to read as follows:

(a) The purchase or sale of used liquor bottles, except as provided in these regulations, is prohibited.

(b) No liquor bottle shall be reused for the packaging of distilled spirits, nor shall the original contents, or any portion of such original contents, remaining in a liquor bottle be increased by the addition of any substance.

JOHN W. HANES,
Acting Secretary of the Treasury.

Approved, April 7, 1939.

[F. R. Doc 39–1206; Filed, April 10, 1939; 12:45 p. m.]

[1] 2 F. R. 898.

TITLE 30—MINERAL RESOURCES

BUREAU OF MINES

PERMISSIBLE TELEPHONES AND SIGNALING DEVICES REQUIREMENTS FOR PERMISSIBILITY, TESTS MADE, AND FEES CHARGED

TABLE OF CONTENTS

(1) AUTHORIZATION AND PURPOSE

(a) Investigations conducted at the Pittsburgh Experiment Station under the provisions of this schedule are authorized by the act of Congress approved February 25, 1913 (37 Stat. 682). This act, as amended by the act of June 30, 1932 (47 Stat. 410), contains the following provisions in regard to fees charged for investigations by the Bureau of Mines:

For tests or investigations authorized by the Secretary of the Interior under the provisions of this Act, as amended and supplemented, except those performed for the Government of the United States or State governments within the United States, a fee sufficient in each case to compensate the Bureau of Mines for the entire cost of the services rendered shall be charged, according to a schedule prepared by the Director of the Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts.

(b) The purpose of investigations under this schedule is to promote the development of telephones and signaling devices that may be used safely in mines, especially in coal mines that may have gassy or dust-laden atmospheres. This schedule supersedes Schedule 9A, issued under date of December 5, 1922, and becomes effective when approved by the Secretary of the Interior.

(c) Telephones and signaling devices approved under the requirements of this schedule will be termed "permissible" by the Bureau, and if actively marketed will be listed as such in publications relating to permissible equipment, for the information of State mine inspection departments, compensation bureaus, mine operators, miners and others interested in safety equipment for mines.

(2) DEFINITIONS

(a) *Adequate.* The word "adequate" means appropriate and sufficient, as determined by mutual agreement of the manufacturer, operators, and the Bureau of Mines.

[1] 4 F. R. 616 DI.
[2] 4 F. R. 879 DI.
[3] 1 F. R. 1802.

(b) *Approval.* "Approval" means official notification by letter, issued only by the Director of the Bureau of Mines to a responsible organization, stating that the device under consideration has been judged to meet the requirements of this schedule.

(c) *Normal operation.* "Normal operation" means the performance by each part of the device of those functions for which the part was designed.

(d) *Permissible.* "Permissible" as used in this schedule means formally approved by the Bureau for use in mine atmospheres that may contain methane or coal dust. The term applies only to complete devices that conform in all respects to the design, assembly and methods of use covered by the approval.

(e) *Protected.* "Protected" means effectively covered, enclosed or otherwise guarded by adequate covers.

(f) *Signaling device.* As used in this schedule, a signaling device is one that gives visual or audible signals without connection to any power or lighting circuit. (Devices operated from such circuits will not be considered for approval.)

(3) INSTRUCTIONS FOR MAKING APPLICATIONS

(a) Before the Bureau of Mines will undertake the active investigation of any equipment, manufacturers shall have filed an application in the form of a letter requesting that the necessary inspections and tests leading to approval be made.

A typical request for an official investigation follows:

The DIRECTOR BUREAU OF MINES,
U. S. Department of the Interior,
Washington, D. C.

Subject: Investigation of _____ Telephone (or signaling device)

DEAR SIR: We hereby make application for inspections and tests leading to formal approval of our type _____ telephone under the provisions of Schedule 9B. Attached is a certified check for ____ dollars ($____) made payable to the Treasurer of the United States to cover the required fees for the investigation.

A copy of this application, one complete telephone, one set of drawings, and a full set of instructions for operating the telephone, are being sent to the Bureau of Mines, Central Experiment Station, 4800 Forbes Street, Pittsburgh, Pa., marked for the attention of the Electrical Engineer.

Very truly yours,

_____
Signature of applicant.

(4) FEES CHARGED

(a) The fees charged in connection with the investigation of telephones and signaling devices are listed below. Manufacturers who desire to have their product investigated for permissibility shall forward a bank draft or certified check covering the required fees, to Washington, D. C., with their letter of application. This shall be made payable to "Treasurer of the United States."

(b) *Item 1. Segregated charges for permissibility investigation.* The following charges will be made for inspections and tests made or repeated during the course of an investigation of each complete device submitted for approval:

Preliminary inspection of complete device	$15.00
Tests of each explosion-proof compartment	12.50
Detailed inspection of each explosion-proof compartment	15.00
Tests to prove adequacy of parts	17.50
Final inspection of complete device	10.00
Total for device having only one explosion-proof compartment	$70.00

(c) *Item 2. Charges for development tests.* Special tests to assist the manufacturer in the development of his device may be made upon request to the Director of the Bureau and will be charged for in amounts proportionate to the work involved.

(5) CONDITIONS GOVERNING INVESTIGATIONS

(a) One complete device together with assembly and detail drawings that show its construction and the materials of which the parts are made, shall be submitted, preferably at the time the application for test is made. These shall be sent prepaid to the Bureau of Mines Central Experiment Station, 4800 Forbes Street, Pittsburgh, Pa., marked "Attention of the Electrical Engineer."

(b) After the device has been inspected by the Bureau's engineers, the applicant will be notified as to the amount of material that he will be required to supply for the tests and of the date on which testing will be started.

(c) No one is to be present at the time the tests are made except the necessary Bureau of Mines engineers, their assistants, representatives of the applicant, and such other persons as may be mutually agreed upon by the applicant and the Bureau.

(d) Formal tests will not be made unless the device has been completely developed and is in a form that can be marketed.

(e) The results of the tests shall be regarded as confidential by all present at the tests and shall not be made public in any way prior to the formal approval of the device by the Bureau.

(f) No verbal report of approval or disapproval will be made to the applicant. After the Bureau's engineers have considered the results of the inspections and tests, a formal written report of the approval or disapproval will be made to the applicant by the Director of the Bureau of Mines. The applicant shall not advertise his device as being permissible or approved, or as having passed the tests prior to receipt of the formal notice of approval.

(6) REQUIREMENTS FOR APPROVAL

(a) *General requirements.* Telephones and signaling devices shall be durable in construction, practical in operation, and suitable for conditions of underground service. They shall offer no probable explosion hazard under normal operation if used in gassy or dusty mine atmospheres.

(b) *Specific requirements.* (1) The circuits external to telephones and signal devices shall be intrinsically safe, that is, the electrical design and construction of telephones and signal devices shall be such that neither contact between wires comprising the external circuits nor contact of tools or other metal objects with external terminals and circuits will result in electrical sparks capable of igniting explosive methane-air mixtures (or such mixtures with coal dust in suspension) during normal operation of the telephones or signal devices.

(2) All parts which, during normal operation, are capable of producing sparks that might ignite explosive methane-air mixtures shall be enclosed in explosion-proof compartments. All openings in the casings of such compartments shall be adequately protected. It is desirable that openings be as few as possible. All joints in the casings of an explosion-proof compartment shall be metal-to-metal so designed as to have a width of contact, measured along the shortest path from the inside to the outside of the compartment, if not less than 1 inch if the unoccupied volume (air space) in the compartment is more than 60 cubic inches. For unoccupied volume of 60 cubic inches or less, a ¾-inch width of contact will be acceptable.

(3) All bolts and screw holes shall be "blind" or bottomed if the omission of a bolt or screw would otherwise leave an opening into the compartment. An adequate lock or seal shall be provided to prevent tampering and exposure of spark-producing parts by unauthorized persons.

(4) Battery cells shall be placed in an explosion-proof compartment or else in one that is locked or sealed, and the terminals and the connections thereto shall be so arranged and protected as to preclude meddling, tampering, or making other electrical connections with them.

(5) Manufacturers shall furnish adequate instructions for the installation and connection of telephones and signal devices in order that the safety of these devices and their circuits shall not be diminished by improper installation. The Bureau reserves the right to require the attachment of wiring diagrams to the cases of telephones and signal devices.

(6) If electric light bulbs are used in signaling devices, they shall be either equipped with effective safety devices, such as are required for permissible electric mine lamps,* or enclosed in explosion-proof compartments.

(c) *Inspection and tests.* (1) A thorough inspection of the telephone or signaling device will be made to de-

*In this case, the requirements of the current schedule for mine lamps will apply.

termine its adequacy and permissibility. Tests may be made to check the electrical characteristics and constants of the various parts, and to determine the adequacy of the insulation and other parts of features of the device.

(2) In addition, compartments of explosion-proof design will be tested while filled and surrounded with explosive mixtures containing varying percentages of Pittsburgh natural gas** and air; the mixture within the compartment being ignited by a spark plug or other suitable means. For some of the tests bituminous coal-dust will be introduced into the compartment in addition to the explosive mixtures and the effects will be noted. A sufficient number of tests will be made under the foregoing conditions to determine the ability of the compartment to retain flame without bursting. Even though the surrounding mixtures are not ignited, the compartment will not be considered as having passed the tests, if flames are discharged from any joint or opening; if excessive pressures are developed or if serious distortion of the compartment walls takes place.

(d) *Special requirements for complete devices.* Telephones and signaling devices will be considered nonpermissible if used under any of the following conditions:

(1) Without the approval plate, mentioned hereafter.

(2) With unprotected openings in any of the explosion-proof compartments. This condition refers to any openings in these compartments, but especially to those equipped with removable covers.

(3) If not complete with all of the parts considered in the approval.

(4) If installed or connected otherwise than in accordance with the instructions furnished by the manufacturer.

(5) If modified in any manner not authorized by the Bureau.

(7) MATERIAL REQUIRED FOR BUREAU OF MINES RECORDS

In order that the Bureau may know exactly what it has tested and approved, it keeps detailed records covering each investigation. These records include drawings and actual equipment as follows:

(a) *Drawings.* The original drawings submitted with the application for the tests and the final drawings which the manufacturer must submit to the Bureau before the approval is granted, to show the details of the device as approved. These drawings are used to identify the device in the approval and as a means of checking the future commercial product of the manufacturer.

(b) *Actual equipment.* If the Bureau so desires, parts of the devices that are used in the tests will be retained as records of the equipment submitted. If the device is approved, the Bureau reserves the right to require the manufacturer to submit one, with the approval plate attached and without cost to the Bureau, as a record of his commercial product.

(8) HOW APPROVALS ARE GRANTED

(a) All approvals are granted through the office of the Director of the Bureau of Mines at Washington, D. C. A device will be approved under this schedule only when the testing engineers have judged that it has met the requirements of the schedule and the Bureau's records are complete, including drawings from the manufacturer that show the device as it is to be commercially made. Individual parts of devices will not be approved. No verbal reports of the investigation will be given and no informal approvals will be granted. As soon as the manufacturer has received the formal approval, he shall be free to advertise his device as permissible.

(9) WORDING, PURPOSE, AND USE OF APPROVAL PLATE

(a) *Approval plate.*—Manufacturers shall attach, stamp, or mold an approval plate on each permissible device. The plate shall bear the seal of the Bureau of Mines and be inscribed as follows:

Permissible Telephone (or Permissible Signaling Device) Approval No. ------ Issued to the ---------- Company.

When deemed necessary, an appropriate caution statement shall be added. The size and position of the approval plate shall be satisfactory to the Bureau.

(b) *Purpose.*—The approval plate is a label that identifies the device so that anyone can tell at a glance whether it is of the permissible type or not. By the plate, the manufacturer can point out that his device complies with the Bureau's requirements and that it has been approved for use in gassy or dusty mines.

(c) *Use.*—Permission to place the Bureau's approval plate on his device obligates the manufacturer to maintain the quality of his product and to see that each device is constructed according to the drawings that have been accepted by the Bureau and are in the Bureau's files. Devices exhibiting changes in design that have not been authorized are not permissible and must not bear the Bureau's approval plate.

(10) WITHDRAWAL OF APPROVAL

(a) The Bureau reserves the right to rescind for cause at any time any approval granted under this schedule.

(11) INSTRUCTIONS FOR HANDLING FUTURE CHANGES IN DESIGN

(a) All approvals are granted with the understanding that the manufacturer will make his device according to the drawings that he has submitted to the Bureau and that have been considered and included in the approval. Therefore, before making any changes in the design he shall obtain the Bureau's authorization of the change. The procedure is as follows:

(1) The manufacturer shall write to the Director of the Bureau of Mines at Washington, D. C., requesting an extension of his original approval and stating the change or changes desired. He should send a copy of the letter, a revised drawing showing the change in detail, and one of each of the parts affected to the Central Experiment Station, 4800 Forbes Street, Pittsburgh, Pa., marked for the "attention of the electrical engineer."

(2) The Bureau will consider the application and inspect the drawings and parts to determine whether it will be necessary to make any tests.

(3) If no tests are necessary, and the change meets the requirements, the applicant will be advised through the Director's office, that his original approval has been extended to include the change.

(4) If tests are judged necessary, the applicant will be advised of the material that will be required and of the necessary deposit to cover the fee for the tests. In this case extension of approval will be granted upon satisfactory completion of the tests and full compliance with the requirements.

MEMORANDUM OF APPROVAL

OCTOBER 18, 1938.

The Bureau of Mines requests your approval of Schedule 9B, "Permissible Telephones and Signaling Devices—Requirements for Permissibility, Tests Made, and Fees Charged," attached, which sets forth requirements for permissibility as determined by the Bureau, following investigations conducted at the Pittsburgh Experiment Station under the provisions of this schedule which are authorized by the Act of Congress (37 Stat. 682), approved February 25, 1913.

The general requirements for approval, as given on page 7 of this schedule, are quoted below:

"Telephones and signaling devices shall be durable in construction, practical in operation, and suitable for conditions of underground service. They shall offer no probable explosion hazard under normal operation if used in gassy or dusty mine atmospheres."

JOHN W. FINCH,
Director.

Approved,

HARRY SLATTERY,
Acting Secretary of the Interior.

[F. R. Doc. 39-1187; Filed, April 8, 1939; 10:27 a. m.]

**Investigation has shown that for test purposes, Pittsburgh natural gas (containing a high percentage of methane) is a satisfactory substitute for pure methane.

TITLE 47—TELECOMMUNICATION

FEDERAL COMMUNICATIONS COMMISSION

CHAPTER XXVIII—MISCELLANEOUS RULES AND REGULATIONS

TABLE OF CONTENTS

PART 500—SPECIAL TEMPORARY RULES GOVERNING THE OPERATION OF SHIP TELEPHONE AND COASTAL HARBOR TELEPHONE STATIONS IN THE GREAT LAKES REGION

Allocation of Frequencies

SEC. 500.01 *Frequencies.* In accordance with, and in addition to, the provisions of Commission Rules 229, 275 (c) and 285 (c) and (d) (C. F. R. Sections 23.03, 70.13 and 80.20), frequencies are allocated to stations in the Great Lakes region for radiotelephone communication as follows:

Coastal Harbor Telephone Stations

2572 kc	calling and safety frequency.
2738 kc	for transmitting message traffic to ship stations (working).
2182 kc	marine broadcast frequency.
2514 kc	for emergency communications only.
4282.5 kc	for calling and transmitting message traffic to ship stations (day only).

Ship Stations

2182 kc	calling and safety frequency.
2118 kc	for transmitting message traffic to coastal harbor stations.
2738 kc	primarily for communication with other ship stations (inter-ship).
4422.5 kc	for calling and transmitting message traffic to coastal harbor stations (day only).
5532.5 kc	for communication with other ship stations (inter-ship) (day only).

A. The frequencies 4282.5, 4422.5, and 5532.5 kc are allocated for use in accordance with these rules during each day, beginning two hours after sunrise and ending two hours before sunset, local standard time, from April 1 to September 1, upon the express condition that no interference is caused to the service of any other station which, in the discretion of the Commission, has priority on the frequency or frequencies with which interference results. In the event interference is caused to the service of any other station deemed to have priority, authority to operate on the involved frequency or frequencies may be cancelled by the Commission at any time without advance notice or hearing.

B. The frequency 2182 kc shall be used by ship and coastal harbor stations for calling and answering other stations initially to establish communication, and for the transmission of messages involving the safety of life and property. Calling, answering, or the exchange of safety communications on this frequency shall not exceed five minutes duration except in the event of emergency or distress.

C. The frequency 2118 kc shall be used by ship stations for transmitting regular message traffic to coastal stations after communication first has been established by use of the calling frequency 2182 kc. Ship stations are authorized to transmit on the frequency 2118 kc only when specifically directed to do so by a coastal harbor station or by a Government station, provided, however, that ship stations licensed to transmit on 2118 kc prior to March 31, 1939, shall not be bound by this regulation if the transmitting equipment is incapable of operating on the frequency 2182 kc, when navigating on Lake Michigan.

D. The frequency 2514 kc shall be used by coastal harbor stations for transmitting message traffic to ship stations, after communication first has been established by use of the calling frequency 2182 kc; provided, however, that coastal harbor stations authorized to transmit on 2514 kc prior to March 31, 1939, may continue to operate on this frequency without regard to the provisions of this rule, whenever the licensee or permittee deems this to be necessary for rendition of adequate public service.

E. The frequency 2738 kc shall be used for ship-to-ship communication primarily for the exchange of communications relating to the safety of navigation and to the ship's business. The exchange of any other communications on this frequency is authorized provided interference is not caused to the handling of messages relating to the safety of navigation and the ship's business, with due regard to the priority of communications designated by Sec. 500.22. Whenever practicable, communication first shall be established on the frequency 2182 kc prior to using the frequency 2738 kc for ship-to-ship communication.

F. The frequency 2738 kc shall not be used by coastal harbor stations except for emergency or distress communications.* [Rules 1–7, inclusive, F. C. C., effective March 31, 1939]

Equipment

SEC. 500.10 *Tolerances.* Notwithstanding any other rule or regulation, the carrier frequency of any radiotelephone transmitting equipment installed on or after March 31, 1939, in coastal harbor telephone and in ship stations in the Great Lakes region, pursuant to special authority granted under the provisions of these rules, shall be maintained within .02 per cent of the assigned frequency when operating on any of the following frequencies:

2118, 2182, 2514, 2572, 2738, 4282.5, 4422.5 and 5532.5 kc.* [Rule 8, F. C. C., effective March 31, 1939]

SEC. 500.11 *Power.* Except for emergency communication, radiotelephone stations aboard ships on the Great Lakes, when transmitting on a frequency within the band 2000–6000 kc, shall not be operated with power in the antenna-circuit in excess of 250 watts during the hours of daylight and 100 watts during all other hours; nor shall any coastal harbor station on the Great Lakes, when transmitting on a frequency within the band 2000–6000 kc (except 2572 kc), be operated with power in the antenna-circuit in excess of 1000 watts during the hours of daylight and 400 watts during all other hours.* [Rule 9, F. C. C., effective March 31, 1939]

SEC. 500.12 *Control of transmissions.* When transmitting on 2182, 2738 or 5532.5 kc by means of radiotelephony, the carrier-wave of any Great Lakes ship or coastal harbor station shall be either automatically "voice-controlled" or controlled manually by the "push-to-talk" method.* [Rule 10, F. C. C., effective March 31, 1939]

SEC. 500.13 *Emissions.* Type A3 emission is authorized for normal use on the frequencies 2118, 2182, 2514, 2572, 2738, 4282.5, 4422.5 and 5532.5 kc. In addition, type A–1 and A–2 emission may be used for the transmission of operating signals, calling, testing, or the transmission of distress or emergency call signals or messages.* [Rule 11, F. C. C., effective March 31, 1939]

Operating Procedure

SEC. 500.20 *Emergency communication.* For the purpose of these rules, the term "emergency communication" means urgent calls, signals, or messages which if delayed would seriously endanger the safety of life or property.* [Rule 12, F. C. C., effective March 31, 1939]

SEC. 500.21 *Distress call, distress signal.* The term "distress call" or "distress signal" means a call or signal indicating

*Sec. 4 (i), 48 Stat. 1066; 47 U. S. C. 154 (i)—Sec. 303 (b), 48 Stat. 1082; 47 U. S. C. 303 (b)—Sec. 303 (c), 48 Stat. 1082; 47 U. S. C. 303 (c)—Sec. 303 (f), 48 Stat. 1082; 47 U. S. C. 303 (f)—Sec. 602 (e), 50 Stat. 197; 47 U. S. C. 602 (e).

that the ship, aircraft or any other vehicle which sends this signal is threatened by serious and imminent danger and is in need of immediate assistance, or that it is aware of another ship, aircraft or vehicle threatened by serious and imminent danger and in need of immediate assistance.* [Rule 13, F. C. C., effective March 31, 1939]

SEC. 500.22 *Priority.* The order of priority of radiotelephone transmission on any of the frequencies designated herein shall be as follows:

1. Distress calls, distress messages and distress traffic.
2. Emergency communications directly relating to the safety of life or property.
3. Communications relating to the safety of navigation on the Great Lakes and adjacent inland waters.
4. Government communication for which priority right has not been waived.
5. All other communications.

* [Rule 14, F. C. C., effective March 31, 1931]

SEC. 500.23 *Special provisions relating to distress.* No provisions of these rules shall be construed as limiting or restricting the use of any assigned frequency, or the power of any station, when transmitting distress calls, signals, or messages, or messages relating directly thereto, or any emergency communications as defined by Sec. 500.20.* [Rule 15, F. C. C., effective March 31, 1939]

SEC. 500.24 *Interference.* Before transmitting, any ship or coastal station shall make sure that it will not produce harmful interference with communications being carried on within its range. If such interference is likely, the station shall wait until the existing communications, which it may disturb, have been concluded, with due regard, however, for the priority of communications designated by Sec. 500.22.* [Rule 16, F. C. C., effective March 31, 1939]

SEC. 500.25 *Cessation of communications.* Whenever a radiocommunication already in progress between two stations appears to be interfered with by a transmission from another station, the latter must cease transmitting at the first request of either of the other two, except as otherwise determined by Sec. 500.22. The station requesting this cessation must indicate the approximate length of the wait imposed upon the station whose transmission is suspended.* [Rule 17, F. C. C., effective March 31, 1939]

SEC. 500.26 *Duration of communications.* Any one exchange of communications between any two stations transmitting on one or more of the frequencies 2118, 2514, 2738, 4282.5, 4422.5, and 5532.5 kc, shall not exceed 15 minutes in duration. Subsequent to such exchange of communications, the same frequency (or frequencies) shall not again be used for communication between the same two stations until 15 minutes have elapsed, provided that this rule shall in no way limit distress or emergency communications.* [Rule 18, F. C. C., effective March 31, 1939]

Marine Broadcast

SEC. 500.30 *Regularly scheduled transmissions.* Each regularly scheduled broadcast of safety messages to ships, including weather and hydrographic information, by coastal stations on 2182 kc, shall be limited to a maximum period of 10 minutes with a one minute interval at the end of the first five minutes of transmission. Such broadcast shall not take place more than three times each day from any one coastal station nor shall there be more than three such broadcasts in the same geographical area when served by more than one station, except for the broadcast of urgent matter and notification pertaining to ships in distress. Transmissions shall be made in accordance with prearranged schedules subject to prior approval of the Commission in order to avoid interference between stations and to facilitate reception of the messages aboard ships. The use of the frequency 2182 kc for this purpose is authorized only for coastal harbor stations whose communication range covers geographical areas not already covered by other stations broadcasting equivalent information on this frequency.* [Rule 19, F. C. C., effective March 31, 1939]

SEC. 500.31[1] *Use of frequency 2572 kc.* The frequency 2572 kc shall be used by coastal stations for scheduled broadcasting to ships of navigational and safety information of benefit to mariners on the Great Lakes when this information is of such nature and volume that its broadcast on 2182 kc would tend to interfere with calls and the normal exchange of communications thereon. Prior to such broadcasts on 2572 kc, a brief announcement thereof shall be made on the frequency 2182 kc. Application for authority to transmit on 2572 kc shall be accompanied by the proposed schedule of marine broadcasts, together with a sample of the material to be broadcast.* [Rule 20, F. C. C., effective March 31, 1939]

Station Logs

SEC. 500.40 *Logs.* The licensees of ship stations and coastal harbor stations shall be responsible for the maintenance of an accurate log of the operation of such stations on frequencies within the band 1500 to 6000 kc in accordance with the following:

Entries shall be made by a licensed radio operator or, in the case of ship stations, may be made under his direction by an officer of the vessel holding a license as such issued by the Bureau of Marine Inspection and Navigation, Department of Commerce, and shall include the following items:

(a) Date and time of beginning and completion of each complete exchange of communications with any other station.

(b) Frequency or "channel" used for transmission to any other station and for receiving marine broadcasts.

(c) Name of station or call letters with which communication is established or from which marine broadcasts are received. Stations may be designated in all entries by call letters or in the case of coastal stations by location.

(d) Name of licensed operator on duty and responsible for transmitter operation during communication with any other station.

(e) Source and extent of interference, if experienced during actual communication or during reception of marine broadcasts or other important information.

(f) Brief entry indicating nature of communications exchanged and whether such communications were subject to tariff charges.

(g) All distress, urgent and emergency signals transmitted or intercepted, the full text of any distress messages and distress communications observed, and incidents or occurrences which may appear to be of importance to safety of life or property, and local weather conditions at the time these signals are intercepted in so far as it is possible to make these entries.

(h) In the case of ship stations, the approximate position of the vessel at the time of communication with any other station or at the time distress signals are heard or whenever marine broadcasts are received from coastal harbor or government stations.

(i) In the case of ship stations, the time of arrival at and departure from ports, giving names of each. The times used for making an entry in the station log shall be expressed in four figures, starting at midnight of the time at the meridian of Greenwich.[2] The abbreviation "GMT" (equivalent to that designated in the United States as Greenwich Civil Time) shall be stated at the heading of the column in which the time is entered.* [Rule 21, F. C. C., effective March 31, 1939]

SEC. 500.41 *Log entries.* No station log or portion thereof shall be erased, obliterated, or wilfully destroyed, and

[1] Use of the frequency 2572 kc is reserved for United States Government stations throughout the Great Lakes region for broadcast of marine information during the following daily periods: 4:00 a. m. to 6:00 a. m., E. S. T., 10:00 a. m. to 12:00 noon, E. S. T., 4:00 p. m. to 6:00 p. m., E. S. T., 10:00 p. m. to 12:00 midnight, E. S. T., and in the vicinity of Detroit, Michigan, the periods from 30 to 40 minutes past each hour.

[2] Conversion to this time is equivalent to Eastern Standard Time plus 5 hours or Central Standard Time plus 6 hours, counting E. S. T. or C. S. T. hours past noon at 13, 14, 15 etc. up to midnight.

any necessary correction thereto may be made only by the person originating the entry, who shall strike out the erroneous portion and initial the correction made. Rough logs may be transcribed into smooth logs (condensed form), but in such cases the original log, or related memoranda, shall be preserved and made a part of the complete log.* [Rule 22, F. C. C., effective March 31, 1939]

SEC. 500.42 *Retention and disposition of logs.* The disposition of station logs shall be as follows:

(a) The original logs shall be made available for inspection upon request by authorized representatives of the Federal Government.

(b) The original log for each day of operation shall be retained aboard the vessel on which the station is located or at the location of the coastal station for a period of not less than 30 days, unless otherwise directed by the Commission. Thereafter the logs may be filed at an established office of the station licensee provided, however, that logs need not be retained aboard any vessel subsequent to a date on which navigation of the vessel is discontinued for a period which is expected to exceed 30 days.

(c) Logs shall not be removed from ship radio stations during a voyage or when the involved vessel is in a foreign port.

(d) Routine logs shall be retained for a period of one year. Logs involving distress signals or messages or emergency communications shall be retained until, at the request of the licensee or otherwise, destruction is specifically authorized by the Commission.* [Rule 23, F. C. C., effective March 31, 1939]

Application for Special Authority

SEC. 500.50 *Applications for special temporary authority.* Upon application being made, in accordance with the rules of the Commission governing the filing of applications, the Commission may grant special temporary authority to expire not later than February 1, 1940, for existing or hereinafter licensed ship telephone and coastal harbor telephone stations in the Great Lakes region to transmit on one or more of the frequencies 2182, 2118, 2514, 2572, 2738, 4282.5, 4422.5, and 5532.5 kc, pursuant to the provisions of these rules.* [Rule 24, F. C. C., effective March 31, 1939]

SEC. 500.51 *Applications for use of 2738 kc.* Applications for licenses requesting authority for ship stations to operate on the frequency 2738 kc may be made in accordance with the regular rules of the Commission and will be considered in accordance therewith; however, applications for special temporary authority until February 1, 1940, as provided in these rules, may include the frequency 2738 kc therein, without the necessity of filing a separate application for a regular license to authorize operation on this frequency.* [Rule 25, F. C. C., effective March 31, 1939]

Unless otherwise extended or modified by the Commission, these rules shall continue in effect until not later than February 1, 1940.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 39–1201; Filed, April 10, 1939; 11:08 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

INTERSTATE COMMERCE COMMISSION

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 3rd day of April, A. D. 1939.

[Ex Parte No. MC 5]

IN THE MATTER OF SECURITY FOR THE PROTECTION OF THE PUBLIC AS PROVIDED IN THE MOTOR CARRIER ACT, 1935, AND OF RULES AND REGULATIONS GOVERNING THE FILING AND APPROVAL OF SURETY BONDS, POLICIES OF INSURANCE, QUALIFICATIONS AS A SELF-INSURER OR OTHER SECURITIES AND AGREEMENTS BY MOTOR CARRIERS AND BROKERS SUBJECT TO THE MOTOR CARRIER ACT, 1935

Rules and regulations governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities and agreements prescribed by an order[1] dated August 3, 1936, as amended by an order of February 13, 1937,[2] and relating to the matter of security for the protection of the public, being under consideration:

It is ordered, That said order of February 13, 1937, be, and it is hereby vacated in so far as it relates to brokers.

It is further ordered, That said order of August 3, 1936, be, and it is hereby, modified so that until the further order of the Commission, brokers shall not be required to comply with the rules and regulations prescribed in said order of August 3, 1936, until 60 days after the date of the determination by us of their respective applications for licenses, provided, however, that, as to any of such applications heretofore determined by us, applicants shall not be required to comply with such rules and regulations until 60 days after the date of this order.

By the Commission, Division 5.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 39–1196; Filed, April 10, 1939; 10:29 a. m.]

[1] 1 F. R. 1439.
[2] 2 F. R. 325.

Notices

DEPARTMENT OF THE INTERIOR.

Bureau of Reclamation.

LOWER YELLOWSTONE PROJECT, MONTANA-NORTH DAKOTA

ADVERTISEMENT OF LANDS FOR LEASE

MARCH 30, 1939.

1. Sealed proposals will be received at the office of the Bureau of Reclamation, Washington, D. C., until 2 o'clock P. M., April 24, 1939, for the lease for grazing and/or agricultural purposes of all or any tract or tracts of the land shown on the accompanying list.

2. The lands will be leased for the period ending December 31, 1939, the lessee having no option to renew. The bidder shall state in the proposal (a) the legal description of such subdivisions or tracts which he proposes to lease, (b) the area in acres, and (c) the rental price he proposes to pay. The bidder may make such stipulations as he may desire regarding combinations of tracts he is willing to accept. *Please use attached proposal blanks.*

3. Bids must be accompanied by payment in full. Funds so remitted by unsuccessful bidders will be returned on making of award. Remittance should be in the form of certified check, bank draft, or money order, drawn in favor of "Bureau of Reclamation."

4. Those desiring to bid should first consult a copy of lease form 7–523–A–G, on file at the office of the Manager, Lower Yellowstone Board of Control, at Sidney, Montana, which lease must be promptly executed by successful bidders before possession of the land is given, and which describes various rights reserved by the United States, and other details not herein enumerated, to which the lessee must agree.

5. Envelopes containing bids must be sealed, marked and addressed as follows:

Bid for Lease of Land, Lower Yellowstone Project, Montana-North Dakota, To Be Opened at 2 P. M., Eastern Standard Time, April 24, 1939. Bureau of Reclamation, Washington, D. C.

(Sgd) JOHN C. PAGE, *Commissioner.*

List of Lands Available for Lease

Description	*Area in acres*
T. 19 N., R. 57 E., M. P. M., Montana:	
Sec. 26, Lot 1	30.00
T. 22 N., R. 58 E., M. P. M., Montana:	
Sec. 26, NE¼NW¼, S½NW¼	120.00
T. 23 N., R. 60 E., M. P. M., Montana:	
Sec. 8, Lots 3 and 4	80.00
17, Lot 3	3.00
T. 24 N., R. 60 E., M. P. M., Montana:	
Sec. 30, Lot 1	21.00
Fifth Principal Meridian, North Dakota:	
T. 150 N., R. 104 W.:	
Sec. 17, Lot 2	29.00

Description	*Area in acres*
Fifth Principal Meridian, North Dakota—Continued.	
T. 151 N., R. 104 W.:	
Sec. 2, Lot 8	29.00
Sec. 10, Lot 1	31.00
Lot 2	11.60
Lot 3	21.05
NE¼NE¼	40.00
Sec. 11, Lot 2	38.45
T. 152 N., R. 104 W.:	
Sec. 28, Lot 8	25.30

To the Bureau of Reclamation, Washington, D. C.:

Pursuant to the accompanying advertisement, and subject to all of the provisions thereof, the undersigned proposes to lease all the land described below, for the period ending December 31, 1939, at the rental named:

Legal description	Area in acres	Rental
Total		

Enclosed is _____
(Certified Check, Bank Draft or Money Order)
for $_____

_____
(Bidder)

_____
(P. O. Address)

_____
(Date)

[F. R. Doc. 39-1191; Filed, April 8, 1939; 10:32 a. m.]

National Bituminous Coal Commission.

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS: IN RE RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 20 AS COORDINATED AND PROPOSED BY THE DISTRICT BOARD FOR DISTRICT NO. 20

AN ORDER FOR AND NOTICE OF FINAL HEARING IN THE MATTER OF THE ESTABLISHMENT OF RULES AND REGULATIONS INCIDENTAL TO THE SALE AND DISTRIBUTION OF COAL BY CODE MEMBERS WITHIN DISTRICT NO. 20

Whereas, Pursuant to Orders Nos. 244, 248, and 250 of the Commission, the District Boards for each of the several districts proposed and submitted to the Commission rules and regulations incidental to the sale and distribution of coal by code members within their respective districts, as provided by Section 4, II, (a) of the Act, and

Whereas, Pursuant to hearings heretofore held in this Docket No. 15, the Commission made Findings of Fact and Conclusions relating to said proposals, and approved or modified said proposals for the purpose of coordination, as provided by Section 4, II, (a) of the Act, and

Whereas, The Commission, by its Orders Nos. 253, 254, 255, 256, 259, 260, 261, 264, and 266, directed the District Boards for each of Districts Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, and 23 to coordinate the said rules and regulations, as approved by the Commission for the purpose of coordination, and

The District Board for District No. 20, having reported to the Commission that it has coordinated said approved rules and regulations as to all consuming market areas common to Districts Nos. 14, 16, 18, 20, and 23, as heretofore published by the Commission in connection with the Order for and Notice of Hearing in the matter of rules and regulations incidental to the sale and distribution of coal by code members as coordinated by the District Boards for Districts Nos. 14, 16, 18, and 23, with the exception of the rule relating to substitution, which said District Board No. 20 has modified, as set forth in Appendix A, attached hereto, and the said District Board for District No. 20, having submitted such coordinated rules and regulations together with such modified rule, to the Commission, and

Whereas, A hearing will be held before the Commission in Washington, D. C., commencing at 10:00 o'clock a. m. on April 19, 1939, in the Matter of the Rules and Regulations as Coordinated by the District Boards for Districts Nos. 14, 16, 18, and 23, at which Hearing the rules and regulations as coordinated and proposed by the District Board for District No. 20 will be offered as the proposals of the District Board for District No. 20:

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That notice be, and the same is hereby given, that the Commission will, in its Hearing Room in the City of Washington, D. C., hold a final hearing commencing at 10:00 a. m., on the 19th day of April, 1939, for the purpose of receiving evidence to enable the Commission to establish rules and regulations incidental to the sale and distribution of coal by code members within District No. 20, as provided by Section 4, II, (b) of the Bituminous Coal Act of 1937.

2. That at said hearing, the aforesaid rules and regulations as coordinated and proposed by the District Board for District No. 20 will be offered as proposals, and all interested parties will be afforded an opportunity to present evidence relating to the consistency or inconsistency of said proposed rules and regulations with the requirements of Section 4 of the Act, and as to their conformity or nonconformity to the standards of fair competition as established by Section 4 of the Act, and as to the reasonableness or unreasonableness of said proposed rules and regulations, and such other evidence as would enable the Commission to prescribe and establish reasonable rules and regulations in conformity with the procedure and standards set forth in Section 4 of the Bituminous Coal Act of 1937. Said proposals shall be subject to such modification as may be warranted by the evidence adduced at the hearing. Upon the close of said hearing, the Commission will make its final determinations.

3. That the record of all proceedings heretofore held in this Docket No. 15 pertaining to the matter of the proposals of rules and regulations incidental to the sale and distribution of coal by Code Members submitted by the several District Boards upon which the Commission's prior approval of the rules and regulations for the purpose of coordination was based, will be made a part of the record of this final hearing.

4. That the Secretary of the Commission be and he is hereby directed to cause a copy of this Order for and Notice of Hearing, together with a copy of the proposals made by the District Board for District No. 20, to be mailed to each code member within District No. 20, and shall cause a copy of this Order and Notice including Appendix A to be mailed to each code member within Districts Nos. 14, 15, 16, 17, 18, 19, 22, and 23, and shall cause copies thereof to be published forthwith in the FEDERAL REGISTER and to cause copies thereof to be mailed to the Consumers' Counsel, to the Secretary of each District Board and to all parties who have entered their appearances in this proceeding, and shall cause copies thereof to be made available to interested parties at the Office of the Secretary of the Commission, Washington, D. C. and at each Statistical Bureau of the Commission.

By order of the Commission.
Dated this 8th day of April, 1939.

[SEAL] F. WITCHER MCCULLOUGH,
Secretary.

Appendix A

In lieu of the rule relating to substitution as coordinated by the representatives of the District Boards for Districts Nos. 19, 20 and 22, as set forth in the Agreement of the representatives of said Districts, heretofore published on April 3, 1939, the District Board for District No. 20 proposes that the following rule be substituted:

No substitution of grades or sizes of higher price coal on spot orders or contracts may be made unless the higher price be applied to such substituted size,

except (1) Where coal is sold for railroad locomotive fuel use provided, however, that coal having a top size in excess of one and five eighths inches may not be substituted for coal of one and five eighths inch top size or under and: (2) That one and five eighths inch slack may be substituted for one inch slack in not less than cargo or railroad carload lot shipments if made directly to industrial consumers by code members and: (3) That the substitution clause adopted by District No. 17 shall apply to code members in Districts Nos. 19, 20 and 22 for shipments made into Market Areas Nos. 104 to 112 inclusive, 132, 133, 136 to 145 inclusive, and that the substitution clause adopted by Districts Nos. 19, 20 and 22 shall apply to Code Members of Districts Nos. 14, 16, 17, and 18 shipping coal into Market Areas Nos. 148 to 156 inclusive. The aforesaid substitutions may be made only upon the following conditions:

(a) The proposed substitutions shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Where a substitution is made by a Code Member, such Code Member shall immediately file the form prescribed by the Commission with the Statistical Bureau of the District in which the coal originates.

Marketing Rules and Regulations as Coordinated and Proposed by the District Board for District No. 20

The representatives of District Boards Nos. 14, 16, 17*, 18, 19*, 20, 22*, and 23, appointed pursuant to Commission Orders Nos. 253 and 254, report to the Commission and to each of said District Boards, their recommendation for the adoption of coordinated marketing rules and regulations as follows:

1. The representatives of said District Boards are unanimous in their recommendation that the rules and regulations set forth in the appendix hereto are reasonable.

2. The representatives of said District Boards likewise recommend that the following additions to the rules set forth in the appendix hereto are reasonable; that as to District No. 16, the following sentence should be added to rule 1 (I) of Section VII:

"Every Code Member or his sales agent shall each month report to the Statistical Bureau, and the District Board for the district in which he is located, every case in which an overdue payment or a note, trade acceptance, or other form of indebtedness, has been accepted in settlement of any account, setting forth all conditions of such overdue payment, note, trade acceptance, or other form of indebtedness;"

that as to District No. 16, the following rule should be added to Section XI as rule 7 under the sub-title *General:*

"Pea or slack shall not be loaded for shipment in box cars;"

that as to Districts Nos. 14, 16, 17*, 18, and 23, the following rule should be added to Section XI under the sub-title *Substitution:*

"No substitution may be made upon any spot order or contract, of any grade or size of coal taking a minimum price higher than the price specified in such order or contract, except upon the following conditions:

(a) The proposed substitution shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the code member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the code member.

(d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the code member over his competitors.

(e) Such substitution may be made only with the approval of a duly designated representative of the Commission and in each instance formal application therefor shall be made upon forms provided by the Commission and permits shall be issued prescribing the conditions of substitution in each case approved.

(f) Substitution will be allowed by producers on orders for railroad fuel without prior approval of the Commission; provided, however, the producer immediately shall file the form prescribed by the Commission with the Statistical Bureau of the district in which the coal originates.

(g) A monthly report of substitution permits shall be mailed by code members to the office of their Board. The Commission may from time to time publish the essential facts as to all substitution permits granted.

(h) In each case of coal shipped under a substitution permit each invoice shall specifically show the permit number and the size and grade of coal substituted;"

that as to Districts Nos. 19,[1] 20,[2] and 22[1] the following rule should be added to Section XI under the sub-title *substitution:*

"No substitution of grades or sizes of higher price coal may be made, except for railroad locomotive fuel, (other than slack), on spot orders or contracts, unless the higher price be applied to such substituted size. Substitutions on orders for railroad locomotive fuel (other than slack) may be made only upon the following conditions:

(a) The proposed substitutions shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already

[1] Rules and Regulations for this District are included in the proposed Rules and Regulations as coordinated by the Commission pursuant to Order No. 268.

[2] In ratifying the report of its representative, District Board No. 20 modified this rule to read as follows:

No substitution of grades or sizes of higher price coal on spot orders or contracts may be made unless the higher price be applied to such substituted size, except: (1) Where coal is sold for railroad locomotive fuel use provided, however, that coal having a top size in excess of one and five eighths inches may not be substituted for coal of one and five eighths inch top size or under and: (2) That one and five eighths inch slack may be substituted for one inch slack in not less than cargo or railroad carload lot shipments if made directly to industrial consumers by Code Members and: (3) That the substitution clause adopted by District No. 17 shall apply to Code Members in Districts Nos. 19, 20 and 22 for shipments made into Market Areas Nos. 104 to 112, inclusive, 132, 133, 136 to 145, inclusive, and that the substitution clause adopted by Districts Nos. 19, 20 and 22 shall apply to Code Members of Districts Nos. 14, 16, 17 and 18 shipping coal into Market Areas Nos. 148 to 156, inclusive. The aforesaid substitutions may be made only upon the following conditions:

(a) The proposed substitutions shall not be an express or implied condition of the order or contract.

(b) The coal substituted must be coal which the Code Member has already produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Where a substitution is made by a Code Member, such Code Member shall immediately file the form prescribed by the Commission with the Statistical Bureau of the District in which the coal originates.

produced and loaded into transportation facilities and which cannot be sold promptly by the exercise of the usual sales effort, such substitution to be limited to a specific tonnage for shipment on a specific order and from a specific mine.

(c) The substitution must be reasonably necessary as an emergency measure in order to continue operation of the mine of the Code Member.

(d) The substitution shall be acceptable to the purchaser of the coal, and shall not be made with the purpose or effect of conferring any advantage on the purchaser or securing any preference or advantage for the Code Member over his competitors.

(e) Where a substitution is made by a Code Member, such Code Member shall immediately file the form prescribed by the Commission with the Statistical Bureau of the District in which the coal originates."

3. The representatives of said District Boards, after due consideration of the subject of crushing of coal, are unanimous in their opinion that no rule relating to this subject should be recommended for adoption in the coordinated marketing rules and regulations.

Dated December 19, 1938.

(Signed) G. S. MINMIER, Jr.,
Representative of District Board No. 14.

(Signed) R. B. GRIFFITH,
Representative of District Board No. 16.

[1] (Signed) GILBERT C. DAVIS,
Representative of District Board No. 17.

(Signed) A. R. LITTS,
Representative of District Board No. 18.

[1] (Signed) F. J. O'BRIEN,
Representative of District Board No. 19.

(Signed) B. P. MANLEY,
Representative of District Board No. 20.

[1] (Signed) D. F. BUCKINGHAM,
Representative of District Board No. 22.

(Signed) W. D. Moore,
By F. J. O'BRIEN,
Representative of District Board No. 23.

Appendix

Marketing Rules and Regulations as Coordinated and Proposed by the District Board for District No. 20 [2]

SECTION I—DEFINITIONS

1. The term "person" as used herein, includes individuals, firms, associations, partnerships, corporations, trusts, trustees, cooperatives, receivers and trustees in bankruptcy and in other legal proceedings, and any other recognized forms of business organizations.

2. A "sales agent" is a person who, as agent of a code member (and therefore without purchasing the coal), sells coal produced by such code member for him or on his behalf: *Provided*, That "sales agent" shall not include an individual (herein referred to as a "salesman") regularly and continuously employed by a code member, whose sole compensation is a stated salary per week, per month, or per year, and who regularly devotes the major portion of his time to the solicitation of purchases of coal produced by his code member employer.

3. A "commission" is the total of all compensations and allowances received by a sales agent from a code member for services rendered in the sale of coal.

4. A "registered distributor" is a person who has been duly registered by the Coal Commission pursuant to the rules and regulations prescribed by the Commission for the administration of Section 4 II (h) of the Act.

5. A "spot order" is a legal obligation for the sale and purchase of coal, the delivery of which is stipulated to be made within not more than thirty (30) days from the effective date of the order, such effective date to be not more than fifteen (15) days from the date upon which the order was accepted.

6. A "contract" is a legal obligation for the sale and purchase of coal, the deliveries of which are stipulated to be made during a period longer than the maximum period specified for a spot order.

7. A "quotation" is an offer to sell coal which the offerer may withdraw prior to its being acted upon by the offeree.

8. An "option" is an offer to sell coal acceptable within a time certain, during which time the offerer may not withdraw the offer without the consent of the offeree.

9. A "commitment" is the status of a contract between the time a quotation is accepted or an option is exercised and the time the contract is formally reduced to writing.

10. "Coal Commission" as used herein, shall mean the National Bituminous Coal Commission established under the provisions of the Bituminous Coal Act of 1937.

11. "Act" as used herein shall mean the Bituminous Coal Act of 1937.

12. "Retailing" is the buying of coal for resale and selling such coal in lots or upon conditions other than those which would entitle a person to be registered with the Coal Commission as a distributor under Section 4 II (h) of the Act.

13. "District Board" as used herein, shall mean any District Board established under the provisions of Section 4, Part I (a) of the Act.

14. "Statistical Bureau" shall mean, unless otherwise specifically stated, the Statistical Bureau of the Commission for the District in which the coal involved in any transaction is produced, or the District in which is located a mine of a code member affected by any order or regulation.

15. "Minimum Price" shall mean a minimum price established and made effective by the Coal Commission.

16. "Maximum Price" shall mean a maximum price established and made effective by the Coal Commission.

17. The term "producer" includes all individuals, firms, associations, corporations, trustees, and receivers engaged in the business of mining coal.

18. The terms "reconsignment" and "diversion" as used herein shall mean the change in the original consignee or in the destination or route.

19. The term "transportation facilities" means railroad cars, ships, barges, trucks, or any other facilities used or useful in the transportation of coal.

20. A "code member" means a producer who has accepted and holds membership in the Bituminous Coal Code promulgated under the Bituminous Coal Act of 1937.

21. The term "domestic market" shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market.

22. "Cargo shipment" is a quantity of coal loaded in a vessel, boat or barge for transportation via water.

23. "Bunker coal" or "vessel fuel" is that coal used aboard a boat or vessel for consumption thereon.

24. "Coal" as used herein shall mean bituminous coal.

25. The term "bituminous coal" includes all bituminous, semi-bituminous and sub-bituminous coal and shall exclude lignite, which is defined as a lignitic coal having calorific value in British thermal units of less than seven thousand six hundred per pound and having a natural moisture content in place in the mine of 30 per centum or more.

26. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

SECTION II—SALES AGENTS

1. All appointments of Sales Agents by Code Members or their agents or authorized representatives shall be subject to the Marketing Rules and Regulations from time to time established by the Coal Commission.

2. Each Code Member shall require compliance by all his Sales Agents and agents and employees of Sales Agents and agents with the provisions of the Bituminous Coal Code and of all rules and regulations, promulgations and determinations of the Coal Commission.

3. Each Code Member shall require all his sales agents clearly to set forth upon any offer, contract, spot order, invoice,

[2] Subject to the specific addition of the rule relating to substitution as approved by District Board No. 20 as set forth on the preceding page.

and statement of account covering coal sold or to be sold, the name of such Code Member principal, and the name of the mine or mines from which shipment was made or is to be made. If the name of the sales agent also appears in the transaction, then the above mentioned forms shall also disclose the fact of agency relationship with the Code Member principal.

4. (A) Every contract for the appointment of a sales agent by Code Members or by agents or authorized representatives of Code Members, or any modification thereof, shall be in writing, and shall fully set forth therein all the terms and conditions of such contract, including the amount or basis of the sales agent's commission. Certified copies of all such agency contracts entered into on or prior to the effective date of the establishment of these rules and regulations and in effect on such date, shall be filed by the Code Member with the Statistical Bureau, or Bureaus, within twenty (20) business days after such date.

(B) Certified copies of all contracts appointing sales agents or of agreements modifying any sales agency contract, entered into subsequent to the effective date of these rules and regulations, shall be similarly filed by the Code Member within ten (10) business days after the date upon which such contracts or agreements have been entered into.

(C) Upon the expiration, termination, or rescission of any sales agency contract, the Code Member principal shall make a report thereof to the Statistical Bureau, or Bureaus, within ten (10) business days after the date of such expiration, termination, or rescission.

5. (A) As to all coal sold by a Code Member otherwise than through a sales agent or through an employee regularly employed as a salesman by the Code Member at his principal place of business or at a regularly established sales office, such Code Member shall, not later than the last day of each month, file with the Statistical Bureau, or Bureaus, a list of all persons through whom, directly or indirectly, any such coal was sold during the preceding calendar month, with a statement of the duration and character of their employment, the tonnage sold by, and the rate and amount of compensation paid to, each of them.

(B) Not later than the last day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus, similar information obtained from his sales agents concerning sales of coal made during the preceding calendar month, by the sales agents' representatives and employees other than salesmen employed at the principal place of business or a regularly established sales office of the sales agent.

(C) Not later than the last day of each month, each Code Member shall also file with the Statistical Bureau or Bureaus a statement showing the names and addresses of distributors to whom the Code Member or his sales agents sold coal during the preceding calendar month, the tonnage sold, and the amount of discount allowed to each such distributor.

6. Within twenty (20) business days after the effective date of these rules and regulations, each Code Member shall file with the Coal Commission a list showing the names and addresses of all his sales agents. Upon any change in said list, the Code Member shall notify the Coal Commission within ten (10) business days after such change takes place.

7. A list showing the names and addresses of sales agents and the Code Members for whom such agents act shall be published monthly by the Coal Commission.

8. All agency contracts and other information filed by Code Members in conformity with the foregoing regulations, other than the names and addresses of sales agents, shall be held by the Coal Commission as the confidential records of said parties and shall not be made public without the consent of the Code Member from whom the same shall have been obtained, except where such disclosure is required in any proceeding before the Coal Commission by way of enforcement of the Act or upon the order of any court of competent jurisdiction.

9. From and after twenty (20) business days following the effective date of these Marketing Rules and Regulations no Code Member or sales agent of a Code Member shall allow or pay, directly or indirectly, any commission or compensation to any sales agent

(a) Unless the contract of agency shall have been filed with the Coal Commission, as hereinbefore required, and

(b) Unless the sales agent shall have agreed, in writing, with the Code Member to conform to and observe the minimum and maximum prices and Marketing Rules and Regulations established by the Coal Commission and the Fair Trade Practice Provisions of the Act, as well as all proper Orders of the Commission, and

(c) Unless the sales agent shall have in good faith complied with the agreement as in paragraph (b) above provided.

10. No commission shall be paid to a sales agent by a Code Member where the coal is delivered or sold to any person who owns such sales agent or who financially or otherwise controls such agent.

11. When any commissions are paid to a sales agent on a tonnage basis, the Code Member shall not include in the computation of such commissions any part of the tonnage of coal sold by him to the sales agent, whether for consumption or resale.

12. No Code Member shall employ any person or appoint any sales agent at a compensation obviously disproportionate to the ordinary value of the service or services rendered and whose employment or appointment is made with the primary intention and purpose of securing a preferment with a purchaser or purchasers of coal.

13. Subject to further order of the Coal Commission, the amount of commission to be paid by a Code Member to his sales agent shall be fixed by agreement of the parties, subject, however, that upon complaint of violation of the unfair methods of competition, as provided in the Act, the amount of such commission shall be subject to review by the Coal Commission.

SECTION III—DISCOUNTS

1. No Code Member or sales agent of a Code Member shall pay or allow any discount from minimum prices to any person unless such person has been registered by the Coal Commission as authorized to receive such discount at the time of the sale.

2. Code Members or their sales agents may allow discounts from minimum prices on sales of coal to registered distributors, not in excess of the maximum discount or price allowances prescribed by the Coal Commission upon such sales. Only one such discount may be allowed on any such sale.

3. Except as expressly authorized in rules and regulations or orders promulgated by the Coal Commission, no Code Member or sales agent may grant or allow any discount or reduction, including any allowance for shipping on a Government Bill of Lading, from the applicable minimum prices upon the sale of coal to any person, including agencies of the Federal Government or agencies of state or local governments.

4. Every sale of coal to a distributor upon which a discount is allowed shall be made subject to the express condition that the distributor is authorized to receive the discount.

SECTION IV—LIMITATION OF ORDERS, AGREEMENTS, OPTIONS AND QUOTATIONS

1. Subject to a prior order of the Coal Commission suspending or revoking this rule 1 of Section IV hereof, to be made not later than thirty (30) days after the effective date of minimum prices, no Code Member or sales agent of the Code Member shall enter into any agreement or order for the sale of coal providing for delivery for a period in excess of that authorized for a spot order, and no prices shall be less than the applicable minimum prices in effect at the time of the making of the agreement or order: *Provided, however,* That contracts for periods not exceeding one (1) year may be made with agencies of the Federal Government or with agencies of State or local governments, where the contract is entered into through competitive bidding, at the following applicable minimum prices:

(a) For deliveries during the first thirty (30) days of the contract, at not

less than the applicable minimum prices in effect at the time of the making of the agreement;

(b) For deliveries thereafter, at not less than the applicable minimum prices in effect at the time of delivery if such price is higher than the contract price.

Provided, further, that contracts for periods not exceeding one (1) year at prices not less than the said applicable minimum prices may be made with agencies of the Federal Government or with such agencies of the State or local governments, in the absence of competitive bidding, where by virtue of an express exemption in the statute or ordinance such agencies may enter into contracts for the purchase of coal without regard to competitive bidding.

2. While the preceding rule is in effect, no option may be given by a Code Member or sales agent for the purchase of coal. When the above rule is suspended or revoked by the Coal Commission, options for the sale of coal may be given for a period not exceeding fourteen (14) days. No options may be given at a price less than the applicable minimum price in effect at the time of the giving of the option. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the option shall not have been exercised at that time, the option thereupon shall become null and void: *Provided, however*, That in connection with offers to sell to the United States Government, or States or political subdivisions thereof, options may be given for a period not exceeding forty-five (45) days from the date of the offer or from the final date for the filing of offers.

3. Quotations may also be given for a period not exceeding fourteen (14) days. If the applicable minimum price is increased beyond the quoted price within such fourteen (14) days and the quotation shall not have been accepted at that time, the quotation thereupon shall become null and void.

4. Every quotation and option shall provide that it is made subject to the provisions of the Marketing Rules and Regulations of the Coal Commission.

5. All quotations and options must be made or confirmed in writing. Every Code Member, or his sales agent, shall require of his offeree that the acceptance of a quotation or the exercise of an option be in writing.

SECTION V—SPOT ORDERS

1. A spot order shall be in writing or confirmed in writing within five (5) business days from the date of the making thereof.

2. Each spot order shall be subject to the following conditions which shall either be endorsed upon the form of the order or upon the written confirmation thereof by the Code Member or his sales agent, the meaning and effect of which shall not be changed or altered by any other provision of the order:

"(a) No shipment consigned to any destination may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(b) The coal shipped pursuant to this order is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied.

"(c) If shipments called for by this order are not completed within thirty (30) days from the effective date of this order, the unfilled portion of the order shall not be delivered."

3. In any case where a sale is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in Item 2 (a) of this section without first securing the consent of his Code Member principal to be confirmed in writing.

4. All the terms and conditions of a sale of coal must be fully and expressly set forth either in the order or in the written confirmation thereof and such order or written confirmation thereof shall specifically contain all the terms required by Rule 1 of Section VI of these Marketing Rules and Regulations. Within ten (10) business days after the date of the making of the spot order or date of the written confirmation thereof, the Code Member or his sales agent shall file with the Statistical Bureau or Bureaus a copy of such spot order or confirmation. Any modification of a spot order must also be made in writing and filed with the Statistical Bureau or Bureaus in the same manner.

5. All spot orders for the sale of coal, the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at time of delivery as established at the time of the making of the spot order.

SECTION VI—CONTRACTS

Upon the revocation or suspension of rule 1 of Section IV of these Marketing Rules and Regulations, Code Members or sales agents of Code Members may thereafter enter into contracts for the sale and delivery of coal upon the following terms and conditions:

1. Every contract shall be in writing and shall express the entire agreement between the parties. The contract shall clearly state the date of execution, the effective date, the expiration date, the price agreed upon, the terms of payment, the size and grade of coal, the number of cars or tonnage to be shipped, the name of the Code Member and the name of the originating mine, and, where the coal is purchased for consumption, the use to which the coal is to be applied. Contracts may also be made either (a) calling for a buyer's entire requirements or a stated percentage of his requirements, showing the maximum tonnage to be shipped thereunder, or (b) covering a buyer's requirements and stating the estimated tonnage to be shipped with an allowable overshipment of not exceeding twenty (20) per cent of such estimated tonnage.

The provisions of the rule stated in the foregoing paragraph relating to quantity shall not apply to contracts made with agencies of the Federal, State or local governments in case the terms required to be submitted in a bid or offer for such contract are in conflict with such provisions.

2. No contract for the sale of coal shall provide for deliveries to commence at a date later than ninety (90) days from the date upon which such contract is entered into.

3. No contract shall be made at a price below the applicable minimum price as established by the Coal Commission at the time of the making of the contract for the coal to be sold thereunder, and no coal may be delivered upon a contract at a price below such applicable minimum price.

4. All contracts for the sale of coal the minimum price of which is subject to seasonal increase, shall provide that the price payable thereunder shall not be less than the price to be in effect at the time of delivery as established at the time of the making of the contract.

5. No contract shall provide for delivery over a period in excess of twelve (12) months except by special permission and approval of the Coal Commission, upon a showing of the necessity of meeting the long term contract competition of oil, gas, or other fuels or forms of power, or for such other reasons as the Commission may deem appropriate in order to further the effectual administration of the Act.

6. Any change in the terms of a contract, not in violation of these Rules and Regulations, shall be evidenced by a written agreement and shall conform to all the requirements set forth in these Rules and Regulations.

7. A report of every commitment shall be filed by the Code Member or his sales agent with the Statistical Bureau or Bureaus, within fifteen (15) business days from the date of the making of the agreement. Such report shall set forth all the terms and conditions of the commitment.

A true copy of every contract and of any agreement for modification thereof shall be filed with the Statistical Bureau within fifteen (15) business days from the date of execution of such contract or agreement for modification: Provided, however, that a report of the commitment need not be filed if a copy of the contract is filed within fifteen (15) business days.

8. Each contract shall contain the following provisions, the meaning and effect of which shall not be changed or altered by and other provision of the contract:

"(a) This contract and the performance of all provisions thereof are expressly subject to the Bituminous Coal Act of 1937 and the proper orders and regulations issued thereunder by the National Bituminous Coal Commission."

"(b) No shipment consigned to any destination point may be reconsigned or diverted without the consent of the seller to be confirmed in writing. In case of any reconsignment or diversion, the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of the reconsignment or diversion for delivery to the destination to which such shipment is actually delivered and for the use to which it is actually applied.

"(c) The coal shipped pursuant to this contract is sold and purchased upon the following conditions:

"(1) If the coal is sold for consumption, it shall be used in the plant or plants named herein and for the use stated herein;

"(2) In case of diversion by the buyer to a use other than that stated herein, the buyer shall notify the seller in writing and the seller shall charge and the buyer shall pay not less than the applicable minimum price for such coal at the time of diversion for the use to which it is actually applied."

9. In any case where a contract is made by a sales agent of a Code Member, such sales agent shall not exercise the rights of the seller as defined in item 8 (b) of this section without first securing the consent of the Code Member producing such coal to be confirmed in writing.

10. The making of a contract for the sale of coal at a price below the minimum or above the maximum therefor established by the Commission at the time of the making of the contract shall constitute a violation of the code and such contract shall be invalid and unenforceable.

11. No contract shall be made for the sale of coal for delivery after the expiration date of the Act at a price below the minimum or above the maximum therefor established by the Coal Commission and in effect at the time of making the contract.

SECTION VII—TERMS OF PAYMENT

1. The price and fair trade practice provisions of the Act shall not be evaded or violated by a Code Member, or his sales agent, through the use of terms of payment, and in no instance shall terms of payment be more favorable than the following:

(A) On rail, river, ex-river, or truck shipments, the date of payment of invoices for coal sold shall be on or before the twentieth day of the month following the month in which shipment was made.[4]

(B) On tidewater cargo shipments the date of payment shall be not more than thirty (30) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for tidewater cargo shipment, on or before the twentieth day of the month following the month in which the coal is dumped.

(C) Payment for all tidewater Bunker coal supplied for foreign vessels shall be by cash on delivery or by master's draft on owners in United States currency at not exceeding fifteen (15) days' sight at supplier's option. When drafts are accepted in payment, all bank charges for collection, exchange, etc., shall be for owner's account. Payment for tidewater bunker coal supplied for American vessels shall be made on or before the twentieth day of the month following delivery.

Payment for coal shipped for vessel fuel, and delivered into vessels at ports on the Great Lakes or tributary waters thereof, shall be made on or before the twentieth (20th) day of the month following such delivery.

(D) On lake cargo shipments, the date of payment shall be not more than sixty (60) days from date of vessel bill of lading, and where coal is sold f. o. b. mines for lake cargo shipments, on or before the twentieth (20th) of the second month following the month in which dumped.

(E) On all coal sold to railroads, the date of payment shall be on or before the twenty-fifth (25th) day of the month following the date of shipment.

(F) Invoices shall be paid in full in United States currency, or funds equivalent thereto, not later than the due date.

(G) No portion of the sale price may be withheld by agreement between the buyer and the seller based upon any unadjusted claim of the buyer.

(H) No sale, delivery, or offer for sale of coal shall be made upon any condition, express or implied, that any portion of the sale price may be withheld by the buyer, or deposited in escrow, pending or based upon a determination of the constitutionality of any provision of the Act, of the jurisdiction of the Coal Commission, or the validity or applicability of any order of the Coal Commission.

(I) Where the due date of the account is extended by agreement of the parties, express or implied, or where payment is made by note, trade acceptance or other form of indebtedness, the seller shall charge and the buyer shall pay interest from and after the due date of the account at the current rate in the locality to which the coal is shipped to the vendee.

(J) Freight on all-rail or ex-river shipments shall not be paid by a Code Member, or his sales agent, except to prepay stations as published in current railway tariffs or on shipments to the United States Government, States or political subdivisions thereof. Where freight is thus prepaid, the amount thereof shall immediately upon receipt of freight bill or notice of sight draft payment, be invoiced to the buyer for immediate payment.

(K) No Code Member shall accept as payment in full for any account for the sale of coal any amount which is less than the applicable minimum price for the quantity of coal involved. Provided, however, that a Code Member may enter into a bona fide general creditors' composition with other creditors of a defaulting purchaser. A copy of such creditor's composition shall be filed with the Statistical Bureau within ten (10) business days from the date of making such composition.

(L) The agreement by a Code Member, expressed or implied, to extend credit for a period longer than that authorized by these rules and regulations, with the effect of violating the price provisions or the unfair methods of competition of the Act, shall constitute a violation of the Code.

(M) This section, Section VII hereof, shall not be construed as requiring Code Members to extend to each purchaser the full credit terms herein permitted, but each Code Member shall be free to determine as to each purchaser whether credit be extended, and the terms of credit, if allowed, provided such terms are not more favorable than as herein provided for.

SECTION VIII—USE OF COAL ANALYSES

1. Analyses of coal shall not be utilized by a Code Member, or his sales agent, in selling or offering for sale any coal produced by the Code Member, whether or not the analysis is a term in the offer or sale, unless such Code Member shall have filed with the Statistical Bureau and the District Board for the District in which the coal is produced, a report of the analysis or analyses as used or proposed to be used by him. Such report shall show the following:

(a) The name of the Code Member Producer.

(b) The name of the mine.

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[4] As to District 16, this rule shall apply only on coal sold to an industrial consumer. As to coal sold to persons other than industrial consumers or railroads, the date of payment for invoices shall be not later than the tenth (10th) day of each calendar month for all coal shipped during the preceding calendar month.

(c) The name or geological number of the seam or seams from which the coal is produced.

(d) The name of the size, and, if screened, the dimension or dimensions of the screen or screens over and/or through which the coal is prepared.

(e) Whether the analysis is representative of the entire production of such size of coal, or whether it represents only a portion of such production segregated by selective mining, selective preparation, actual analyses made at the mine, or in any other manner.

(f) That such analysis is representative of the grade and size of the coal as regularly produced by the Code Member and as loaded directly into transportation facilities for shipment to market and that the Code Member is prepared to make deliveries of coal of substantially the quality and character as shown by the analysis.

(g) That each such analysis is not less than approximate analysis showing moisture content, ash, volatile matter, fixed carbon, sulphur and British thermal units and ash softening temperature.

2. Every analysis used in selling, or offering for sale, any particular kind, quality, or size of coal shall be accompanied by a statement to the effect that a copy of such analysis has been properly filed with the Statistical Bureau, the Coal Commission and the District Board.

3. All reports of analyses so filed shall be subject to inspection at the office of the Statistical Bureau at any time during office hours by any interested person, and may be considered by the District Board and the Coal Commission in determining from time to time proper classifications of the coals produced by the Code Member.

4. A copy of any analysis of the coal of a Code Member made by or on behalf of a consumer and accepted by the Code Member as the basis for an adjustment of price under any contract or spot order shall be filed by the Code Member with the Statistical Bureau, the Coal Commission and the District Board, within five (5) business days after such adjustment is made.

5. From and after the effective date of these Rules and Regulations, no Code Member shall enter into or perform any agreement made upon a penalty or a premium and penalty basis which will permit the sale of coal at an aggregate contract price below the applicable minimum price established by the Coal Commission for the coal sold and delivered upon such agreement subsequent to said effective date: Provided, that where a Code Member has entered into an agreement made upon a penalty or a premium and penalty basis, this rule shall not be considered as affecting any claim that the buyer might otherwise have had for sub-standard preparation or quality under Section X of these Marketing Rules and Regulations.

SECTION IX—RESALE OF COAL REFUSED IN TRANSIT OR AT DESTINATION

1. Where coal is refused by a consignee in transit or at destination, the Code Member may sell the same at the best obtainable price, provided that in each case the Code Member shall file with the Statistical Bureau, and the District Board for the District in which the coal was produced, within ten (10) business days from the date of such resale, a statement giving the following information:

(a) Name of consignee
(b) Address of the consignee
(c) Original destination of the coal
(d) Name of Code Member
(e) Originating Mine
(f) The grade and size of coal shipped
(g) Price at which coal was originally sold
(h) Reasons for the refusal
(i) Facts resulting from the investigation of the complaint
(j) Name of ultimate purchaser upon resale
(k) Address of purchaser upon resale
(l) Ultimate destination of the coal
(m) Price received by the seller upon resale
(n) Amount of commission, if any, paid upon the resale
(o) A copy of the carrier's notice of refusal or a notice of reconsignment and such other pertinent information and facts as may be offered in proof of the necessity for such resale
(p) A signed and verified statement that the provisions of the Code and the Marketing Rules and Regulations of the Coal Commission other than as to price have not been violated or evaded

2. All Code Members shall promptly furnish to the District Board and to the Statistical Bureau of the Coal Commission for the District in which the coal originated, full reports of all reconsignments, and shall authorize the carrier making such reconsignments to furnish complete information thereon to such Statistical Bureau.

SECTION X—SUBSTANDARD PREPARATION OR QUALITY

1. Where any claim of allowance or counterclaim is requested by a buyer for any delivery of coal claimed to be substandard in preparation or quality, or where it is claimed by the buyer that due to an error on the part of the shipper the buyer has incurred additional and extraordinary expense in accepting the shipment, the Code Member or his sales agent may, within a reasonable time after delivery of the coal, make settlement and agree with the buyer upon an amount reasonably to be deducted for such inferior coal or on account of such error, and may accept payment therefor at less than the applicable minimum price: Provided, that in each such case the Code Member shall within ten (10) business days after granting such allowance file with the District Board and the Statistical Bureau of the Coal Commission a verified statement giving the following information:

(a) The name and address of the consignee and the reason for the request for the allowance.

(b) The price at which the coal was sold, the tonnage delivered, the name of the mine, the Code Member, the date of shipment, the grade and size of coal, the destination, and the amount of allowance or adjustment made.

(c) Such other pertinent information and facts as may be offered in proof of the necessity for such reduction or allowance.

(d) A statement that the adjustment has not been made with the purpose or intent of evading the price provisions of the Act.

The Code Member shall also file, together with the statement a written claim duly executed by or on behalf of the buyer and verified by affidavit, setting forth the amount claimed by way of deduction and the reasons for the complaint.

2. All such adjustments and allowances shall be subject to review by the Coal Commission.

SECTION XI—MISCELLANEOUS

GENERAL

1. The minimum prices established by the Commission shall not apply to coal sold and shipped outside the domestic market as defined in the Act and in these Marketing Rules and Regulations.

2. Maximum prices established by the Commission shall not apply to coal sold and shipped outside the continental United States.

3. No coal shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the Code; Provided, that the provisions of this paragraph shall not apply to a lawful and bona fide written contract entered into prior to June 16, 1933, which has been filed with the Coal Commission.

4. If, in converting a net or gross ton price, freight rate or freight rate differential, the calculation extends to more than 3 decimals, and the 4th decimal is .0005 or more, it shall be added as .001, and if under .0005 it shall be eliminated.

5. All coal shall be sold and invoiced on a price per ton basis, and all coal must be sold and invoiced under the size, price classification and other designation therefor in the price schedule published by the Coal Commission.

6. Failure to file information required by these Marketing Rules and Regulations or the filing of false information, wilfully made, will subject the party

failing to file the information required, or the party so filing, to the penalties of the Act and other penalties imposed by law.

ADVERTISING

1. No deduction or allowance from invoice prices shall be granted by any Code Member or his sales agent to any purchaser for advertising.

2. Code Members (or their agents or representatives) either individually or collectively, with or without financial participation by retailers of coal, may conduct advertising campaigns seeking to increase the use of coal. The amount of expenditures incurred by a Code Member, his agent or representative for advertising shall be subject to review by the Coal Commission as to the good faith of the transaction.

SCREENING FOR BUYER'S ACCOUNT

1. The screening of mine run or rescreening of other grades of coal, sold and billed as such, for the buyer's account for the purpose of keeping the resultant products separate in the shipment thereof is prohibited.

COAL CONFISCATED IN TRANSIT

1. All coal confiscated or lost in transit shall be invoiced to the carrier at not less than the minimum price established for such coal for shipment to the destination and use to which the coal was sold or the established price for sale to the carrier at the place of confiscation or loss, whichever may be the higher.

REVISION OF MARKETING RULES AND REGULATIONS

1. These Marketing Rules and Regulations are subject to revision and amendment by further order of the Coal Commission.

[F. R. Doc. 39–1209; Filed, April 10, 1939; 12:55 p. m.]

[Docket Nos. 528–FD, 529–FD, 530–FD, 531–FD, 532–FD, 533–FD, 534–FD, 535–FD, 536–FD, 537–FD, and 605–FD]

IN THE MATTER OF APPLICATIONS FOR DETERMINATION OF STATUS UNDER THE SECOND PARAGRAPH OF SECTION 4–A OF THE BITUMINOUS COAL ACT OF 1937; BLUE STAR COAL COMPANY, SWORDS CREEK, VIRGINIA; STANTON COAL COMPANY, ST. PAUL, VIRGINIA; C. P. HARMON, SWORDS CREEK, VIRGINIA; WHITED COAL COMPANY, SWORDS CREEK, VIRGINIA; REEDY COAL COMPANY, SWORDS CREEK, VIRGINIA; BELCHER & HUGHES, SWORDS CREEK, VIRGINIA; E. DUNCAN, SWORDS CREEK, VIRGINIA; CHARLES COMPTON, SWORDS CREEK, VIRGINIA; RUFUS WHITED, SWORDS CREEK, VIRGINIA; CHURCH & BALDWIN, SWORDS CREEK, VIRGINIA; AND FLAT ROCK COAL COMPANY, SWORDS CREEK, VIRGINIA

NOTICE AND ORDER FOR CONTINUANCE

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Congress, 1st Session), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That the hearings in the matter of the above entitled applications originally noticed for March 6, 1939, at 10 o'clock a. m. at the hearing room of the Commission in the Martha Washington Inn, Abingdon, Virginia, by Order of the Commission dated the 15th day of February, 1939, and continued by Order of the Commission dated March 15, 1939 to April 10, 1939, at the same place, be and the same hereby are *continued indefinitely* to be held upon further notice of the Commission.

2. That the Secretary of the Commission is directed forthwith to mail a copy of this Notice and Order for Continuance to the applicants and their attorneys of record, to the Consumers' Counsel, to the Secretary of each District Board, and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 7th day of April, 1939.

[SEAL] F. WITCHER MCCULLOUGH, *Secretary.*

[F. R. Doc. 39–1208; Filed, April 10, 1939; 12:54 p. m.]

DEPARTMENT OF AGRICULTURE.

Bureau of Animal Industry.

NOTICE

APRIL 8, 1939.

To C. I. STAFFORD, FLOYD STAFFORD, LLOYD STAFFORD, and ALVA M. STAFFORD, *Doing business as C. I. Stafford & Sons, Stockyard owner.*

At Greenville, State of Mississippi.

Notice[1] is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U. S. C. Sec. 202 (b)), it has been ascertained by me as Secretary of Agriculture of the United States that the stockyard known as Greenville Stock Yards, at Greenville, State of Mississippi, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (U. S. C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

[SEAL] HARRY L. BROWN, *Acting Secretary of Agriculture.*

[F. R. Doc. 39–1204; Filed, April 10, 1939; 12:29 p. m.]

[1] Modifies list posted stockyards 9 CFR 204.1.

Food and Drug Administration.

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR EACH OF THE FOLLOWING FOODS: TOMATO PUREE, TOMATO PASTE, TOMATO CATSUP, TOMATO JUICE

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSION AND ORDER; IN RE: TOMATO JUICE

General Statement

1. In pursuance of the authority of subsection (e), Section 701 of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], the Secretary of Agriculture, on his own initiative, published, on December 15, 1938, which appeared on page 3012 of the FEDERAL REGISTER, a notice of a public hearing to be held on January 16, 1939, in Room 3036, Department of Agriculture, South Building, Independence Avenue, between 12th and 14th Streets SW., Washington, D. C., for the purpose of receiving evidence upon the basis of which a regulation might be promulgated fixing and establishing a reasonable definition and standard of identity for each of the following foods: tomato puree, tomato paste, tomato catsup, tomato juice. This notice contained a proposal in general terms for a reasonable definition and standard of identity for each of such foods. The notice designated John McDill Fox as the presiding officer for said hearing. Thereafter, a public hearing was held at the time and place therein designated, and said John McDill Fox served as presiding officer. (Government's Exhibit No. 1.)

2. At such hearing the presiding officer announced that he would first hold a hearing on tomato puree.

3. Pursuant to that announcement, he did so hold a hearing on tomato puree, and continued the hearing with reference to the other foods, at dates subsequently to be announced.

4. On January 17, 1939, at 9:30 p. m. the hearing on tomato juice was convened and concluded at 11:35 p. m. on January 18, 1939. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. The presiding officer, therefore, makes this report and suggests that the Secretary make, on the basis of the substantial evidence contained in the record, the findings of fact herein contained, the conclusion herein suggested, and as so found, to order the promulgation of the regulation suggested herein.

6. The proposal, as it appeared in the FEDERAL REGISTER on December 15, 1938,

concerned itself, *inter alia*, with a proposed reasonable definition and standard of identity for the food product commonly known as tomato juice. It read as follows:

Tomato juice is the product obtained from clean, mature, red tomatoes which are sound (or with minor imperfections only) by removing any minor imperfections by hand trimming; by crushing and straining, with or without external application of heat, so as to produce a liquid carrying finely divided tomato flesh in suspension, and to exclude skins, seeds and cores together with a portion of the tomato flesh; it may or may not be homogenized; it may or may not contain the optional ingredient added salt; it is sealed in a container and processed by heat, before or after sealing, to prevent spoilage.

7. Within the time so provided, various interested persons filed proposed findings of fact, based upon the evidence adduced at the hearing, which if granted, would modify the proposal originally printed in the FEDERAL REGISTER. These proposed findings of fact concerned:

(1) The character of the tomatoes used, (2) the method of removing imperfections, (3) varieties of tomatoes used, and (4) the external of internal application of heat.

8. The issue in this hearing narrowed down to the question of whether or not the method of using live steam did or did not create a different identity. Because of the narrow question presented, though this was a hearing to establish a reasonable definition and a reasonable standard of identity, the presiding officer felt compelled to allow testimony which, in main, really was testimony with reference to quality, to appear on the record in so far as it might have a bearing upon a definition and standard of identity.

9. The testimony described in detail what tomato juice was, and what was the background of the Department in setting previous advisory standards, and, under the present act, the basis of presenting the proposal for the standard under such act.

Mr. Callaway, a Government witness, who is a senior chemist in the Food and Drug Administration, United States Department of Agriculture, and Secretary of the Food Standards Committee of the Food and Drug Administration, testified substantially as follows:

After he had qualified himself as an expert, with reference to his early training at Alabama Polytechnic Institute, Pasteur Institute, Paris, France, and Columbia University, he detailed his experience with the Department. It appears that he entered the Bureau of Chemistry of the Department of Agriculture in 1914; and except for a brief interruption for war service, has been continuously with the Department. During such time he had many occasions to observe the methods of manufacture of tomato juice in various plants operating in the eastern third of the United States, and likewise had occasion to supervise the laboratory chemical examination of a great many samples of tomato juice.

As Secretary of the Food Standards Committee of the Food and Drug Administration he participates in the formulation of plans for investigation and puts into effect approved plans for the study, both by field representatives and chemists, on the methods of manufacture and composition as revealed by chemical analysis of various food products which are being taken up with a view to standardization.

At various times the Food and Drug Administration issues in a convenient form the food standards which have been promulgated from time to time as advisory standards. These are known as Service and Regulatory Announcements, Food and Drug Administration. In 1931, the Secretary of Agriculture issued an advisory definition and standard of identity for tomato juice. This was under the Food and Drug Act of 1906 and amendments thereto. This was the present advisory standard that is given in Service and Regulatory Announcements, Food and Drug Administration, No. 2 (S. R. A., F. D. No. 2) and reads as follows:

"The unconcentrated, pasteurized product, consisting of the liquid, with a substantial portion of the pulp, expressed from ripe tomatoes, with or without the application of heat, and with or without the addition of salt." (R., p. 12.)

Commercially tomato juice is a comparatively recent product. From the evidence adduced, it seems that this product, which is a fabricated product, (R., pp. 79, 153) was not put on the market commercially until about or shortly prior to the year 1926. (R., p. 327.)

The witness Callaway (R., p. 13) testified with reference to the data upon which the advisory standard of 1931 was based. His testimony was substantially as follows:

Tomatoes are grown in almost all of the different States of the United States. The commercial production of canned tomato juice, however, is carried on principally in the following areas:

1. Maryland, Delaware and New Jersey.
2. New York State, Pennsylvania.
3. Indiana, Ohio.
4. California, Utah, Colorado, and to some extent in Washington and Oregon.

Canned tomatoes are packed in numerous other States, but the foregoing areas are the principal ones producing tomato juice.

The Food and Drug Administration has been in touch with the manufacture of tomato juice and its movement in interstate commerce since it was first commercially manufactured. There are two essential problems in connection with tomato juice; one is to prevent the use of decomposed tomatoes in its preparation; another is to prevent the "adulteration" of tomato juice with water. The essential process for manufacturing tomato juice is practically the same now as it has been for several years and is roughly as follows (R., p. 14):

Sound red tomatoes are washed and trimmed when necessary to remove any decomposed portions. Cores are removed by some manufacturers. The trimmed tomatoes are put through some type of machine for crushing, then the skins, seeds and cores and a certain proportion of the pulp are separated. Some of the firms manufacturing tomato juice heat the tomatoes before separating the juice. It was noted by the Food and Drug Administration a few years ago that this heating was some time accomplished by the direct application of steam, which resulted in considerable condensation of water into the crushed tomatoes. In the opinion of the witness Callaway, he stated that this water passed over into the finished juice. (R., p. 14.) This, in the opinion of the Food and Drug Administration, according to the witness, constituted an "adulteration" of the juice.

A recent survey of the tomato juice industry was conducted by the Food and Drug Administration under the direction of the witness Callaway, for the purpose of securing information as to the practice in the manufacture of tomato juice during the 1938 season. He prepared the plans for the survey which was carried out by direction of the Food and Drug Administration in accordance with such plans, and reports were submitted to him on the information requested. The field men of the Food and Drug Administration were directed to visit manufacturers of tomato juice in various sections of the country, to observe methods of manufacture, as far as they were permitted to do so by the management of the plants visited, to consult with the officials of the plants, to secure all pertinent available information and to make official reports to the Food and Drug Administration. These reports were received for identification and were physically present in the hearing room and made available for cross-examination. The reports disclosed that field representatives of the Food and Drug Administration visited 62 firms manufacturing tomato juice located in all sections of the United States, and secured from them information as to the methods of producing tomato juice and observed manufacturing practices. With few exceptions, all firms covered by the reports used essentially the same process in manufacturing tomato juice. The principal variations were between those firms which combine the manufacture of tomato juice with the canning of tomatoes and those firms which put up tomato juice and sometimes other tomato products but do not put up canned

tomatoes. Other variations have to do with practices designed to improve the quality of the juice or to prevent destruction of the vitamin content. This being a hearing on identity, the evidence with reference to quality is considered only in so far as it may have a bearing upon identity.

The usual process is that only sound, mature red tomatoes (or in yellow tomato juice, yellow tomatoes) are used. The tomatoes are washed, the unfit tomatoes are sorted out, and the decomposed portions of the tomatoes are trimmed. There is a rather uniform process for crushing and extracting the juice. Crushed tomatoes may be heated previous to or during the extraction of the juice, or a machine may force the fleshy part of the tomato through a fine screen or small holes. There is a process known as homogenizing or viscolizing which is indulged in by about 15 percent of the firms visited. The juice is then packed and salt is added.

Certain variations occur as follows:

1. Addition of juice separated from peeled tomatoes. Occasionally a manufacturer of tomato juice, who also cans tomatoes, will add some of the juice which seeps from the peeled tomatoes, waiting to be canned, to the crushed tomatoes going into the juice extractor.

2. In a few instances some peels, cores and tomato liquid from the preparation of tomatoes for canning will be added to the crushed whole tomatoes going into the extractor.

3. The juice before canning may be heated in a vacuum or semi-vacuum to remove air. As another variation of this, after removal of air, some inert gas may be used in packing.

4. Before packing, the juice may be heated to atmospheric pressure to remove air.

5. The method of canning tomato juice used by one large firm was found to be in part as follows: Crushed tomatoes were heated by live steam, then put through an extractor. A certain amount of the steam condensed into the crushed tomatoes, the juice was then heated and the evaporation carried to a point calculated as compensating for the water added by the condensation of steam in the tomatoes during the preheating.

6. The use of condiments other than salt in tomato juice is unusual, but there is a considerable sale of such products containing other condiments under the name of tomato juice cocktail.

There is also on the market a small amount of tomato juice made from yellow tomatoes but it is not sold as tomato juice unqualified. The method of manufacture is identical with the process used in the manufacture of tomato juice from red varieties except that yellow tomatoes are used instead. (R., pp. 22, 23.)

In the opinion of the witness (R., p. 24) the use in the manufacture of tomato juice of by-products such as peelings, cores, etc., is undesirable. Such by-products may contain a concentration of the surface imperfections of the raw tomato. In the preparation of tomatoes for canning the accumulation of peels and cores results in considerable exposure to the air before these products are used, with the possible impairment of quality in various ways.

The witness stated, as a matter of fact, (R., p. 24) that tomato juice now being prepared, which contains materials derived from peels and cores, is a quite small part of the tomato juice being manufactured. He expressed the opinion that the addition of water to tomato juice would constitute an adulteration of the product. (R., p. 25.) With reference to this there seems to be no controversy. (R., pp. 317–320.) The controversy seems to involve whether or not the injection of live steam with the possible condensate which is afterwards evaporated would be tantamount to an addition of water. The presiding officer very definitely feels that the use of the word "adulteration" is improper in connection with a hearing called for the purpose of evolving a reasonable definition and a reasonable standard of identity to be formulated. To the presiding officer it seems to be a begging of the question to speak of "adulteration" until a reasonable definition and a reasonable standard of identity is formulated. He suggests that the words "dilution" and "concentration" more accurately would define the process.

The witness expresses the opinion (R., p. 25) that heating crushed tomatoes by the direct application of steam results in the addition to them of a considerable amount of water which condenses from the steam, and that where a manufacturer uses such a process and later attempts to remove an equivalent amount of water by boiling, he must make some determination of the actual amount of water condensed, and that, in his opinion, it is practically impossible to determine this with great accuracy and so, where such a process is used, the final juice contains either some excess of water or is concentrated to some extent. In his opinion, the concentration of tomato juice by boiling is undesirable. To permit this, as he claims, would lead to manipulation of the juice which would not be in the interests of the consumer who expects to receive a product prepared with the minimum amount of manipulation or no manipulation. (R., p. 25.)

The witness on cross-examination (R., pp. 73 et seq.) stated in answer to a question that if he thought the only choice the consumer had was between tomato juice with the addition of water plus ascorbic acid (vitamin C) and juice in which there was no addition of water, not even an infinitesimal amount, but an impairment of the ascorbic acid, that the consumer would take the juice with the water and ascorbic acid, but that if the consumer were able to get a product of unimpaired vitamin C and without addition of water, the consumer preference would be for the one without manipulation. The witness further stated (R., p. 114) on cross-examination, by another party, that a reasonable definition of identity should not restrict advancements in the methods of manufacture and that no attempt should be made to restrict a person to a very limited means of accomplishing the desirable purpose of preparing the juice in such a way that it will have all the properties the consumer wants; but that procedures should not be adopted, and that it should not be left to the manufacturer to determine, whether the procedure changes the identity or the desirability of the product. Due to the great difficulty of determining by an examination of the finished product what may have happened, that in his opinion, the best way would be to set up some general definition of the process of manufacturing rather than some definition based on tests made on the finished product.

Mr. Howard, a Government witness, whose qualifications were admitted by everyone, testified substantially in support of the witness Callaway and among other things (R., pp. 125 et seq.) testified that where the crushed tomato was subjected to live steam and then the product subjected to an evaporation, that in the evaporation there was an amount of the flavoring material removed which was an integral substance in regard to the consumer desire of the product and that, therefore, he did not regard tomato juice which was prepared from tomatoes to which live steam has been applied and subsequent evaporation taken place with an attempt to compensate for the additional condensation, as the identical product with tomato juice which had not been subjected to such process.

Certain consumer representatives testified with reference to this matter (R., pp. 235 et seq.). The witness Chatfield, representing the Home Economics Association and herself a consumer and housekeeper and a professional worker in food composition, having qualified as an expert, stated that she was of the opinion that consumers preferred a definition of the product, that is tomato juice, so as to preclude the addition of water even though it might later be removed. Generally consumer understanding is that tomato juice does not have such an addition.

The Government witness, Dr. Osburn testified (R., pp. 345–346) that the product of a particular manufacturer using live steam was neither better nor worse than other tomato juice. There was no testimony that this particular product was not a perfectly wholesome product. There was much testimony, which was uncontradicted, with reference to the

quality of this particular product. There was testimony that many manufacturers formerly had used the live steam method but had since abandoned it. The testimony of the witness Knowles (R., pp. 317–320) is particularly significant. The testimony first states that by an organoleptic test there can be no distinguishment between a tomato juice with "added water from condensed steam." In 1936 there was a survey after considerable publicity regarding the fact that the witness's firm used live steam and that there was a very favorable consumer acceptance according to the survey. He did not know whether or not the consumers knew there was a certain percentage of added water. In response to the question:

"Q. Well, in your opinion, don't you believe that a consumer is entitled to know when added water is in tomato juice?

"A. If added water was in tomato juice I would say yes, but I have never considered in my own opinion, condensate incidental to our process, as having the same bearing on juice, from a standpoint of adulteration, as added water. If added water was added to juice, you would get a proportionate dilution according to the amount you added, but when you use steam, according to good commercial practice, and get an enhanced value by so doing, I do not see that you are weakening or impairing the dietetic strength of the product, and I can't associate it with adulteration."

From the testimony (cross-examination of the witness Callaway, R., pp. 38–42) it would seem that at most the steam condensate would result in an addition of between ½ of 1 percent to 1 percent of moisture. There is testimony that the live steam method is preferred for the purpose of stopping action of the enzymes.

From the uncontradicted evidence it would seem that the food product commonly known as tomato juice was manufactured by one concern with direct application of heat or steam for some time and this was one of the first firms to manufacture the product known as tomato juice, which is a fabricated product. They began the laboratory production of tomato juice in 1925 and began packing and selling it commercially in 1927. The Bureau of Agricultural Economics of the Department of Agriculture in 1929 began publishing statistics on tomato juice. In that year (1929) one particular firm sold 45 percent of all tomato juice included in figures for that year. In 1930 it packed 24 percent of the total; in 1937 it packed and sold 2,017,886 cases, or approximately 15 percent of the total of 13,444,972 shown in the statistics compiled by the National Canners Association. The name "tomato juice" has been commonly applied to juice containing essentially the same elements made in a variety of ways. (R., pp. 203–224.) This amount of cases would result in approximately 100,000,000 cans. There is evidence that the use of steam recovers more flavor than other methods (R., p. 186).

As the presiding officer has stated, much evidence which refers primarily to quality was admitted only to the extent that such evidence might bear on identity.

Therefore, the presiding officer suggests that an order be made and entered by the Secretary of Agriculture setting forth the detailed finding of facts hereinafter suggested as part of such order, and promulgating the regulation hereinafter set forth.

Suggested Findings

1. Tomato juice is a fabricated product (R., p. 79, p. 153). It is not the expressed juice of the tomato (R., p. 127). It is prepared from tomatoes by a succession of treatments including washing before and after sorting (R., p. 17) sorting (R., p. 18) trimming (R., p. 18) scalding (R., p. 19) crushing and extracting with or without heat to remove a part of the liquid and insoluble materials (R., pp. 19, 27) screening to retain the seeds, skins, and a portion of the fleshy material (R., p. 19) homogenizing or viscolizing to prevent the fleshy material from settling out (R., p. 20), heating just below the boiling point and filling into receptacles (R., p. 20). It may or may not be processed after filling (R., p. 20). Salt is added (R., p. 20). Some manufacturers add to crushed tomatoes quantities of juice separated from peeled tomatoes. Others add skins, cores and tomato liquid to the crushed whole tomatoes going into the extractor (R., p. 21). One firm heats the crushed tomatoes by live steam before extraction and heats the juice to a point calculated to compensate by evaporation for the water added by condensation (R., p. 21).

2. Tomato juice on the market varies in flavor (R., p. 162), specific gravity (R., pp. 71, 131), viscosity (R., pp. 20, 82) and vitamin content (R., p. 354). This is due in part to methods of manufacture (R., pp. 52, 172, 274) and to the fact that the moisture or water content of fresh tomatoes vary as much as 4 percent with climate, the soil where grown, the season, and with the rainfall (R., pp. 40, 77, 131).

3. Juice expressed from tomatoes contains among other ingredients (a) from 92 percent to 96 percent water (R., p. 40), (b) sugar (R., p. 46), (c) pectinous material (R., p. 181), (d) citric acid (R., p. 46), (e) ascorbic acid (R., p. 253) and (f) carotene (R., p. 280).

4. Ascorbic acid is Vitamin C (R., pp. 272, 294), the anti-scorbutic vitamin. It is essential to good health in human beings, and tomato juice if prepared so as to preserve the vitamin is a good source of Vitamin C. The ascorbic acid or Vitamin C content of tomato juice can be measured with reasonable accuracy (R., p. 250). Some brands contain only one-half as much ascorbic acid as other brands (R., pp. 194, 357).

5. Carotene in the beta form is substantially the same as Vitamin A (R., p. 281), which is essential to human health (R., p. 276). It is found in tomatoes (R., p. 280) and when protected during the course of manufacture is found in tomato juice (R., p. 289).

6. The preservation of the vitamin properties of the tomatoes in tomato juice is in the interest of consumers (R., pp. 247, 290).

7. It is impossible to establish a reasonable definition and standard of identity for tomato juice that will fix specific gravity, ascorbic acid content (R., pp. 77, 131, 362), the proportion of soluble to insoluble solids or the percentage of other ingredients (R., p. 79).

8. There are present in tomatoes enzymatic substances which if not inactivated bring about immediate chemical changes in the tomatoes when crushed if oxygen is present (R., pp. 50, 174). As a result of such chemical action both the ascorbic acid and the carotene in the tomato juice may be destroyed (R., p. 274), the tomato flavors may be affected (R., p. 174), the product may lose viscosity, and separation may occur (R., p. 176), due to the fact that the natural pectin of the tomato is changed to pectic acid (R., pp. 181, 274).

9. Enzymes are inactivated only when the tomatoes are heated to approximately boiling temperature (R., pp. 50, 179). They are appreciably inactivated when tomatoes are subjected to the direct application of steam during the process of crushing (R., p. 179). Oxygen entrapped in tomatoes is also expelled by the application to them of steam during the process of crushing (R., p. 312).

10. The portions of the tomato next to the skin and seeds contain the highest concentration of the ascorbic acid, Vitamin C and of carotene, Vitamin A (R., pp. 184, 207 contra p. 360), and live steam is one of several efficient, practical means that can be used for extracting all of the essential tomato qualities, including flavor (R., p. 186).

11. Steam condensate forms when steam is applied to crushed tomatoes. There is testimony based upon experiments that in the normal course of manufacture the amount of water thus added is approximately 11 percent and the percentage of water content of the tomato juice is increased .945 to .963 percent. The statement on page 202 of the record that the increase would be ½ of 1 percent does not seem to be accurate. Tomato juice that would otherwise have a water content of 96 percent acquires, if the added condensate is not removed, a water content of approximately 97 percent. There would have been added, however, 10 percent of water to the mass (R., p. 42). The amount of steam condensate re-

sulting from the use of steam during the process of crushing can be calculated with reasonable accuracy (R., p. 201). There is some testimony that an equivalent amount of water can be, and under present practice is, substantially removed by evaporation (R., p. 202) together with, perhaps, some integral part of the tomato (R., p. 265).

12. A tomato product obtained by evaporating to remove from 10 percent to 12 percent water added as steam condensate in a process of manufacture otherwise similar to the process of manufacture of tomato juice, (R., pp. 17, 124, 125, 157, 227) is not the identical thing as tomato juice which the consumer understands (R., p. 326) and is not the identical thing as tomato juice prepared by the process of manufacture used by most tomato juice manufacturers (R., pp. 17, 123–125, 157, 227, 344–346) which does not add water as steam condensate and later evaporates in an attempt to compensate for such addition of water (R., pp. 126, 149, 150).

13. In evaporating the product in an attempt to remove the steam condensate the exact water that has been added cannot be removed. (R., pp. 38, 125.)

14. In evaporating the product in an attempt to remove the steam condensate a negligible though certain amount of the flavoring of the tomato is boiled off, flavoring being an integral substance as regards the consumer desire of the product (R., pp. 125, 134–140, 143–154, 303), and some ascorbic acid or Vitamin C may be lost. (R., p. 202.)

15. Tomato juice extracted with steam is now sold on the market in substantial quantities, and has been sold in substantial quantities continuously since 1930 under the common and usual name of tomato juice. (R., pp. 203, 217.)

16. The flavor may be determined by organoleptic tests (R., p. 138).

17. The evidence indicates there were suggested four reasonable definitions and standards of identity for tomato juice, by Mr. Callaway (R., pp. 23, 117), by Mr. Howard (R., pp. 126, 127), by Mr. Osburn (R., pp. 157, 158), and by Mr. Sewell (R., p. 322), which reasonable definitions and standards of identity do not contemplate the addition of water, either as steam condensate or otherwise, in the preparation of the product.

18. Such tomatoes are washed to remove dirt and dust and they may or may not be scalded or passed through a steam box to loosen the skins, in either event any water collecting on the tomatoes is permitted to drain off; sorted to remove unsuitable or unfit tomatoes; trimmed to remove decomposed portions; so crushed and strained, either cold or so heated as to preclude the addition of water, as to extract the liquid and a part of the flesh and to exclude skins, seeds and core material; such liquid and a part of the flesh may or may not be homogenized to reduce the size of the fleshy particles so as to prevent rapid settling; salt may or may not be added for seasoning; and if the finished product is sealed in a container it may or may not be so processed by heat before or after sealing as to prevent spoilage. (R., pp. 17, 18, 23, 117, 118, 122, 127, 157, 158, 322, 329.)

19. Ordinarily the term "juice" to most people means a clear liquid which separates from a fruit and in many cases the word "juice" represents a filtered liquid (R., p. 80) but when associated with the word "tomato" it has come to represent, in addition to the liquid portion of the tomato, a part of the flesh which has been finely divided and carried in suspension. (R., pp. 12, 19, 80, 23, 117, 122, 127, 128, 153, 157, 322, 328, 329.)

20. Tomato juice is not a concentrated product. (R., pp. 12, 25, 38, 73, 123, 133, 134, 161.)

21. It would be unreasonable and impracticable in the interest of consumers to define and standardize the food product commonly known as tomato juice based upon an analysis of the finished product as an index of identity for the reason that tomatoes vary greatly as to their specific gravity, vary with the season, from year to year, in the same locality, and it is not a product having a definite amount of solids and liquid. (R., pp. 78, 79, 115, 130, 131, 322.)

22. Most firms manufacturing tomato juice use essentially the same process and the essential and typical steps in such process do not include a method of heating and crushing tomatoes in such manner that from 10 percent to 12 percent of water is added to the crushed tomatoes by means of live steam coming directly in contact with the crushed tomatoes and condensing into water. (R., pp. 17, 123–125, 157, 227, 344–346, 365) though many firms formerly did use such a process.

23. Other tomato juice manufacturers have heretofore used a process whereby live steam came in contact with crushed tomatoes and water added to the product as steam condensate, and that there has been an abandonment (R., pp. 346, 347, 349), with one exception (R., pp. 21, 125, 365), of the use of live steam in the tomato juice industry where such live steam introduces water into the product as steam condensate.

24. When whole tomatoes are washed or scalded to remove dirt and to loosen the skins, any water remaining on the whole tomatoes is permitted to drain off and the amount of water which may be added in this manner is insignificant. (R., pp. 28, 29, 159–161, 226.)

25. Under the new Food, Drug, and Cosmetic Act, objective examination of the finished product is not the only way to determine whether water as steam condensate or otherwise has been added to tomato juice in the process of manufacture. (R., pp. 70, 76–78.)

26. There is substantial evidence that in the manufacture of tomato juice, where there are various methods of manufacture available and equally suitable in the respect that they do not impair the valuable constituents or the vitamin that are in the tomato, it is in the interest of the consumers and will promote honesty and fair dealing in their interest that a method which debased the article in any respect or which permitted a manipulation of the article by adding water and later evaporating in an attempt to compensate for the water added should be excluded. (R., pp. 25, 38, 42, 69, 74, 78, 128, 129, 303.)

27. In the manufacture of tomato juice, there is some testimony that there are a number of machines on the market and in use, other than the one using the direct application of live steam to crushed tomatoes, whereby the tomatoes are crushed and heated in such manner that aid is excluded and enzymes inactivated equally as efficient as the method which utilizes the direct application of live steam to crushed tomatoes. (R., pp. 52, 53, 332, 333.)

28. There would seem to be, from the evidence which is slight that there is a consumer preference for tomato juice manufactured with unimpaired vitamin content and without added water. (R., pp. 74, 75, 326.)

29. Vitamin "C" in tomato juice is variable, due as much to natural variations in tomatoes as to methods of preparation. (R., pp. 67–69, 129, 193, 194, 253–255, 272, 274, 275, 287, 297, 347, 348, 354–358.)

30. All tomato juices have substantial amounts of Vitamin "C" in them. (R., pp. 193–198, 297, 300, 301, 333, 346–348, 354–358.)

31. Tomato juice having the lowest reported Vitamin "C" content is indisputably still tomato juice. (R., pp. 70, 129, 297, 301, 333, 346–348, 354–358.)

32. The vitamin content is therefore not an identity factor but undoubtedly is a quality factor. (R., pp. 70, 74, 129, 301, 348, 354–358.)

33. All of the foregoing findings of fact would apply to a product prepared from yellow varieties of tomatoes except that when yellow varieties of tomatoes are used the product is known as and labeled yellow tomato juice. (R., pp. 23, 118, 129, 158, 324.)

Suggested Conclusion in the Form of a Regulation

Tomato Juice, Yellow Tomato Juice—Identity. (a) Tomato Juice is the unconcentrated liquid extracted from mature tomatoes of red varieties, with any unsoundness removed by trimming, and with or without scalding followed by draining. In the extraction of such liquid, heat may be applied by any method which does not add water thereto. Such liquid is strained free from skins, seeds and other coarse or hard substances, but carries finely divided insoluble solids from the flesh of the tomato. Such liquid may be homogenized, and may be seasoned with salt. When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage.

(b) Yellow Tomato Juice is the liquid extracted from tomatoes of yellow vari-

eties. Except for the use of tomatoes of yellow varietes, it conforms to the definition and standard of identity for tomato juice.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact, conclusion, and order, shall transmit such objection in writing to the Hearing Clerk. At the same time each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

Date: April 1st, 1939.

[F. R. Doc. 39–1185; Filed, April 7, 1939; 2:27 p. m.]

CIVIL AERONAUTICS AUTHORITY.

At a Session of the Civil Aeronautics Authority held in the city of Washington, D. C., on the 7th day of April 1939.

[Docket No. 31–401 (E)–1]

IN THE MATTER OF THE APPLICATION OF WESTERN AIR EXPRESS CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 401 (e) (1) OF THE CIVIL AERONAUTICS ACT OF 1938

ORDER AUTHORIZING ISSUANCE OF CERTIFICATES

Western Air Express Corporation, having filed application for a certificate of public convenience and necessity under section 401 (e) (1) of the Civil Aeronautics Act of 1938; a full hearing[1] thereon having been held; the Authority upon consideration of the record of such proceedings having issued its opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof; and finding that its action in this matter is necessary pursuant to said opinion:

It is ordered, That there be issued to Western Air Express Corporation a certificate of public convenience and necessity authorizing it, subject to the provisions of such certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point San Diego, Calif., the intermediate points Long Beach and Los Angeles, Calif., and Las Vegas, Nev., and the terminal point Salt Lake City, Utah.

It is further ordered, That there be issued to Western Air Express Corporation a certificate of public convenience and necessity authorizing it, subject to the provisions of such certificate, to engage in air transportation with respect to persons, property and mail between the terminal point Salt Lake City, Utah, the intermediate points Ogden, Utah, Pocatello, and Idaho Falls, Idaho, West Yellowstone, Butte, and Helena, Mont., and the terminal point Great Falls, Mont.

It is further ordered, That the exercise of the privileges granted by each of said certificates shall be subject to the terms, conditions, and limitations prescribed by Regulation 401–F–1[1] issued by the Authority on February 24, 1939, all amendments thereto, and such other terms, conditions, and limitations as may from time to time be prescribed by the Authority.

It is further ordered, That said certificates shall be issued in the forms attached hereto and shall be signed on behalf of the Authority by the Chairman of the Authority and shall have affixed thereto the seal of the Authority attested by the Secretary. Said certificates shall be made effective from the 22d day of August, 1938.

By the Authority:

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39–1197; Filed, April 10, 1939; 10:52 a. m.]

NOTICE OF POSTPONEMENT OF HEARING

APRIL 8, 1939.

Docket No. 45–401 (E)–1, Canadian Colonial Airways, Inc., Application under section 401 (e) (1) of the Civil Aeronautics Act of 1938 and Regulation 401–B–1 of the Civil Aeronautics Authority promulgated thereunder, for a permanent certificate of convenience and necessity authorizing the applicant to engage as an air carrier of persons, property, mail, and Canadian mail, in scheduled foreign air transportation between New York (Port Newark, Newark, New Jersey), via Albany, New York, in the United States, to Montreal, Province of Quebec, Dominion of Canada, and return, and as amended January 7, 1939, to include a stop at Burlington, Vermont.

Docket No. 44–402 (C)–1, Canadian Colonial Airways, Ltd., Application under section 402 (c) of the Civil Aeronautics Act of 1938 and pursuant to Regulation 402–D–1 of the Civil Aeronautics Authority, for a permit authorizing the applicant to engage as a foreign air carrier of persons, property, mail, and Canadian mail, in scheduled foreign air transportation between Montreal, Province of Quebec, Dominion of Canada, via Albany, to New York (Port Newark, Newark, New Jersey), New York, in the United States of America, and return.

Public hearing in the above-entitled proceedings now assigned on April 11, 1939, is hereby postponed to April 13, 1939, 10 o'clock a. m. (Eastern Standard Time), at the offices of the Civil Aeronautics Authority in Washington, D. C., before Examiner George A. Keyser.

GEORGE A. KEYSER,
Examiner.

[F. R. Doc. 39–1203; Filed, April 10, 1939; 11:31 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 3319]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 5th day of April, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF STEEL OFFICE FURNITURE INSTITUTE, AN ASSOCIATION, ITS OFFICERS AND MEMBERS; REMINGTON RAND, INC.; BROWNE-MORSE COMPANY; COLUMBIA STEEL EQUIPMENT COMPANY; GENERAL FIRE PROOFING COMPANY; ART METAL CONSTRUCTION COMPANY, INC.; BENTSON MANUFACTURING COMPANY; BERGER MANUFACTURING COMPANY; CORRY-JAMESTOWN MANUFACTURING CORPORATION; THE GLOBE-WERNICKE COMPANY; INVINCIBLE METAL FURNITURE COMPANY; METAL OFFICE FURNITURE COMPANY; THE SHAW-WALKER COMPANY; VICTOR SAFE & EQUIPMENT COMPANY, INC.; THE YAWMAN & ERBE MANUFACTURING COMPANY, CORPORATIONS; TIDEWATER OFFICE EQUIPMENT DEALERS' ASSOCIATION, AN ASSOCIATION, ITS OFFICERS AND MEMBERS; NORFOLK STATIONERY COMPANY, INC; HAMPTON ROADS PAPER COMPANY; EMERSONS, INC., CORPORATIONS; FRANK B. HODGSON, TRADING AS FRANK B. HODGSON OFFICE FURNITURE, AND GEORGE ANDREW CARNEGIE, TRADING AS CARNEGIE OFFICE APPLIANCE CO.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Charles F. Diggs, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Wednesday, April 19, 1939, at ten o'clock in the forenoon of that day (eastern

[1] 3 F. R. 2694 DI.

[1] 4 F. R. 1029 DI.

standard time), Grand Jury Room 528, Old Post Office Building, Cleveland, Ohio.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39–1184; Filed, April 7, 1939; 2:03 p. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 333]

ALLOCATION OF FUNDS FOR LOANS

APRIL 5, 1939.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project Designation	*Amount*
Pennsylvania R9006D2 Indiana	$50,000
Virginia R9022D1 Caroline	20,000

JOHN M. CARMODY, *Administrator.*

[F. R. Doc 39–1202; Filed, April 10, 1939; 11: 08 A. M.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of April 1939.

[File No. 1–6]

IN THE MATTER OF TITLE INSURANCE CORPORATION OF ST. LOUIS COMMON STOCK, $25 PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The Title Insurance Corporation of St. Louis, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X–12D2–1 (b) promulgated thereunder, having made application to the Commission to withdraw its Common Stock, $25 Par Value, from listing and registration on the St. Louis Stock Exchange; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Tuesday, May 2, 1939, at the office of the Securities & Exchange Commission, 105 West Adams Street, Chicago, Illinois, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Henry Fitts, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–1193; Filed, April 8, 1939; 11:01 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of April 1939.

[File No. 1–2283]

IN THE MATTER OF HALIFAX TONOPAH MINING COMPANY ASSESSABLE CAPITAL STOCK PAR VALUE 10¢

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The Salt Lake Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X–12D2–1 (b) promulgated thereunder, having made application to strike from listing and registration the Assessable Capital Stock, Par Value 10¢, of Halifax Tonopah Mining Company; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on April 19, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–1192; Filed, April 8, 1939; 11:01 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of April 1939.

[File No. 1–2382]

IN THE MATTER OF NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY THREE-YEAR 6% NOTES, DUE OCTOBER 1, 1938

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The New York Stock Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X–12D2–1 (b) promulgated thereunder, having made application to strike from listing and registration the Three-Year 6% Notes, due October 1, 1938, of New York, Chicago and St. Louis Railroad Company; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on April 14, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39–1194; Filed, April 8, 1939; 11:01 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 7th day of April 1939.

[File No. 30–32]

IN THE MATTER OF FRANK D. COMERFORD, SIDNEY ST. F. THAXTER AND ROBERT H. MONTGOMERY, TRUSTEES, UNDER AGREEMENT DATED NOVEMBER 29, 1935, BETWEEN INTERNATIONAL HYDRO-ELECTRIC SYSTEM, NEW ENGLAND POWER ASSOCIATION, OLD COLONY TRUST COMPANY, AND SAID TRUSTEES

ORDER PURSUANT TO SECTION 5 (D)

Frank D. Comerford, Sidney St. F. Thaxter and Robert H. Montgomery, Trustees, under an Agreement dated November 29, 1935 between International Hydro-Electric System, New England Power Association, Old Colony Trust Company and said Trustees, a registered holding company under the Public Utility Holding Company Act of 1935, having filed an application pursuant to Section 5 (d) of the Act for an order declaring that said Trustees have ceased to be a holding company; a hearing [1] on said application having been held after appro-

[1] 4 F. R. 1240 DI.

priate public notice; the record in this matter having been examined and the Commission having made appropriate findings;

It is ordered, That Frank D. Comerford, Sidney St. F. Thaxter and Robert H. Montgomery, Trustees under an Agreement dated November 29, 1935, between International Hydro-Electric System, New England Power Association, Old Colony Trust Company and said Trustees, have ceased to be and at this time are not a holding company. This order shall become effective as of the 7th day of April, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1198; Filed, April 10, 1939; 11:00 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C. on the 7th day of April 1939.

IN THE MATTER OF THE ACME WIRE COMPANY COMMON STOCK, PAR VALUE $10

ORDER GRANTING APPLICATION UNDER SECTION 12(F) AND 23(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE X-12F-2(B) PROMULGATED THEREUNDER

Continuance of unlisted trading privileges on the New York Curb Exchange in the Voting Trust Certificates representing the Common Stock, Par Value $20, of The Acme Wire Company having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule X-12F-2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12(f) and 23(a) of the Securities Exchange Act of 1934, as amended, and Rule X-12F-2(b) promulgated thereunder, that the determination sought by said application is made and the application is hereby granted, effective May 1, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1200; Filed, April 10, 1939; 11:00 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C. on the 7th day of April 1939.

IN THE MATTER OF THE PENNROAD CORPORATION COMMON STOCK, PAR VALUE $1

ORDER GRANTING APPLICATION UNDER SECTION 12 (F) AND 23 (A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE X-12F-2 (B) PROMULGATED THEREUNDER

Continuance of unlisted trading privileges on the New York Curb Exchange in the Voting Trust Certificates for Common Stock, Par Value $1, of The Pennroad Corporation having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule X-12F-2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule X-12F-2 (b) promulgated thereunder, that the determination sought by said application is made and the application is hereby granted, effective May 1, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1199; Filed, April 10, 1939; 11:00 a. m.]